Overruled. 1-7/2 Grier Davis
Motion to dismiss Nov 6 -
- submitted -
The Clerk
to my room -
Portland Oregon with mandate

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~379~~ 146

HENRY H. RAYMOND, PLAINTIFF IN ERROR,

vs.

WILLIAM M. THOMAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

FILED FEBRUARY 10, 1874.

Per Howard

A. V. Gray no
Divide

SUPREME COURT OF THE UNITED STATES.

No. 379.

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1 WILLIAM M. THOMAS
vs.
MARY RAYMOND AND HENRY H. RAYMOND.

STATE OF SOUTH CAROLINA:

At a supreme court begun and held for the State of South Carolina, at the April term of 1873 of said court, present and presiding the honorable F. J. Moses, chief-justice, and J. J. Wright and A. J. Willard, associate-justices of said court, the following proceedings were had upon the transcript of the record from the court of common pleas for the county of Greenville, in the eighth circuit of said State, in the case of William M. Thomas against Mary Raymond and Henry H. Raymond.

2 STATE OF SOUTH CAROLINA.

Eighth circuit, Greenville County.

WILLIAM THOMAS
vs.
MARY RAYMOND AND H. H. RAYMOND. } Bill to foreclose mortgage.

The plaintiff sold and conveyed to the defendant, Mary Raymond, a house and lot in the town of Greenville, South Carolina, for the sum of $7,000, payable six months after the ratification of peace with the United States, or before, at her option, with interest on the same from 1st September, 1863, payable annually. To secure the payment, the said Mary Raymond, on the day of the purchase, to wit, the 25th August, 1863, gave her note under seal for the amount to the plaintiff, and also a mortgage of the same premises.

On the 28th May, 1866, the plaintiff filed his bill for foreclosure and enforcement of the note, and the suit came on to be heard at Greenville, in July, 1866, before his honor Chancellor Johnson, who "ordered and decreed that it be referred to the commissioner to ascertain the amount due on the sealed note, reduced to two thousand five hundred dollars, and that all payments of interest in confederate money be re-

3 duced in the same proportion; and that the parties be at liberty, at the foot of this decree, to take such orders as may be necessary to carry the same into execution, by foreclosing the mortgage, or otherwise."

This decree being unsatisfactory to the plaintiff, he took an appeal therefrom to the court of appeals, which court referred the cause to the court of errors, and there, at December term, 1867, the appeal was dismissed, and the decree of the chancellor affirmed. All of which will more fully and at large appear by reference to the report of the case in vol. xv., So. Ca. Law Reps., page 86 et seq.

Decree of Ch. Johnson.

4 JOHNSON, *Ch:*

On the 25th day of August, 1863, the complainant sold and conveyed to the defendant a house and lot in the town of Greenville for the sum of seven thousand dollars, payable six months after the ratification of peace with the United States, or before, at his option, with interest on the same, payable annually from the first day of September, in the year aforesaid. And to secure the payment of the same the defendant, on the day first aforesaid, gave her sealed note for the same

and a mortgage of the house and lot to the complainant. The whole of the principal and a considerable portion of the interest, if not the whole, are still unpaid.

On the 28th day of May, 1866, the complainant filed his bill for the purpose of foreclosing the mortgage and enforcing the payment of the sealed note. The defendant, in her answer, interposed two objections to the prayer of the bill:

First. That the law usually known as the stay law was in existence at the time the contract was made, and was continued from year to year up to the time of filing the bill, and that under the provisions of the same the complainant had no right to institute proceedings for the collection of money. I decided that, inasmuch as the stay law, which was in existence at the time the contract was made, expired, be the
5 terms of its own limitation, on the adjournment of the next session of the general assembly of the thereafter, the case stood upon the same footing that it would have done had the contract been made prior to December, 1861; and that it was governed by the decision in the case of The State *vs.* Carew, (13 Rich., 498.) And secondly, that by the provisions of the ordinance of the convention, adopted on the 27th day of September, 1865, the defendant was not liable to pay the whole amount for which the sealed note and mortgage were given, but only the true value of the house and lot at the time the purchase was made, it having been done within the periods prescribed by the ordinance. The complain't insisted that this defence could not prevail, for two reasons: First, because the ordinance was *was* void in this, that it impaired the obligation of contracts; and secondly, because, by the terms of the sealed note, it was apparent that it was the intention of the parties that it should be paid in good money, or that the complainant should have the right to wait until six months after the termination of the war, and demand such currency as might be in use at the time. I ruled that the ordinance of the convention did not impair the obligation of contracts, but, on the contrary, enforced them, in accordance
6 with their spirit and intention, by enlarging the rules of evidence in relation to the same; and that, if the ordinance had not been adopted, the courts would have been compelled to permit evidence to be introduced to show the true consideration of the contracts entered into between the designated periods, in order to prevent great injustice from being done; and that the price agreed to be paid for the house and lot was so much more than their true value that I could not infer from the terms of the sealed note that the contract was not made upon the basis of confederate money. And, consequently, I referred it to the commissioner to ascertain and report what the true value of the house and lot was on the 25th of August, 1863, with leave to report any special matter; and during the term the commissioner reported as follows, to wit:

"A good many witnesses have been examined as to the cost of the lot and improvements, both before and since the war; as to its value in 1863, in confederate money, and also in a good currency; and as to its relative value compared with other lots in Greenville sold during the same year, some for cash, (confederate money,) and one payable after the war. The commissioner finds it very difficult to arrive at any definite conclusion as to what was it' real value at the time it was
7 sold, on account of the conflicting testimony of the witnesses, men who ought to know the value of property and the cost of building. Mr. Cline, a witness on the part of the complainant, thinks the improvements on the lot must have cost $2,000, and this opinion is based

upon estimates made recently. Mr. Arthur, another one of the complainant's witnesses, says he offered complainant, about the time of the fall of Fort Sumter, $2,500 for the place, and that he would have given $3,000, but complainant asked $4,000. This was for another party. Col. Goodlett and other witnesses of complainant say the place was worth at least $3,000. These values were in 1861.

"Now, per contra, Mr. Hammett, a witness on the part of defendant, thinks the place was worth $1,500; Mr. David, another witness on same side, makes same estimate; and Mr. McKay, on the same side, says $2,000. This is the value *of* the present time.

"Now, as to the price witnesses put upon the property at the time it was sold, in confederate money, Mr. Hammett says $3,000; Mr. David says the same; Mr. Goodlett says from $10,000 to $12,000; Mr. Arthur says from $12,000 to $13,000. How can the commissioner reconcile these statements of opinion?

8 "Again, as to the relative value of the lot in question compared to the Croft house and brick house, (Robinson,) James Goodlett house and McConnell house, which were sold in 1863, the testimony is that the Croft house sold for $16,100, the brick house for $17,000, the James Goodlett house for $9,000, and the McConnell house for $5,500. Now, as to the relative value of the lot in question, as compared to the above houses and lots, first take the testimony of Mr. Arthur. He thinks, if put up, the Croft house would have sold for something more—would have made a difference of some $4,000 to $5,000; don't think there would have been much difference if a party wanted for the use of his family. Col. Goodlett says he sold his house and lot for $12,000, which he offered to complainant for the note in suit; says the McConnell house was sold in 1862 for $4,500, payable after the war; that the same house was sold in 1863 for $5,500 cash, (confederate money;) last house is on Main street, adjoining the business portion of the town; is a fine, large house; thinks it would bring twice as much as complainant's; thinks complainant's house is more marketable, and for his own use would rather have it; don't think there is much difference between the

9 house he sold and complainant's. The McConnell house was sold by Hill to McConnell, in Savannah. Thus it will be seen that there is as great a difference, in the opinion of the witnesses, as to its value in confederate money as to its value both before and since the war.

"It is in evidence that the lot originally cost one Smith $900; that complainant paid Smith $1,250 and did a great deal of repairs.

"The commissioner has concluded that when there is such a difference of opinion among the witnesses as to its value that the only course left for him to pursue is to try and strike a medium course between them. Thus, Mr. Hammett says $1,500, Mr. David $1,500, Mr. McKay $2,000, Mr. Arthur $3,000, Col. Goodlett $3,000, and Mrs. Thurston $3,000 to $3,500, making $14,000 to $15,000, which, divided by six, will give as an average price of from $2,333.33 to $2,500. It is agreed by most of the witnesses that the great demand for houses in 1863, on account of the influx of refugees, caused a considerable advance in the value of houses and lots in Greenville. Some think 25 per cent., some more, some less. Let us put the advance at 25 per cent., and the average value of the lot at $2,400, a medium average value from the testimony of the

10 witnesses, and we have $3,000 as the result. The commissioner therefore recommends that the true value of the lot for which the sealed note of seven thousand dollars was given was $3,000."

To this report various exceptions were filed by each party. The complainant excepts, first, because the ordinance of the convention under

which the commissioner acted is of no validity, as it impairs the obligation of contracts, in violation of the Constitution of the United States. This exception I overrule for the reasons hereinbefore stated. And secondly, because "the note and other testimony show that it was not based upon confederate money, and was not to be paid in such currency, and was therefore the true value of said property as agreed on by the parties." The conversations of the defendant with Mrs. Thurston seem to establish the fact that the complainant was at some time—and most likely at the time the contract was entered into—unwilling to receive the purchase-money of the house and lot; but it does not appear from any evidence before the court that it was because the note was
11 ultimately to be paid in a currency which was not available at that time. Had the confederate cause succeeded, and a treaty of peace been ratified, as was anticipated by the parties as appears by the note, confederate money would most *most* probably have continued to be the currency of the country; and it is very doubtful if it would have been more valuable when the note became due than it was when it was given.

The wrong to the defendant, who is a lady over seventy years old, would be so great to require her to pay the whole amount of the note in good money, that I could only be induced to decree it upon the most satisfactory proof that that was the original understanding between the parties, and that the defendant had been in no way imposed on.

Taking the note and all the evidence submitted with the report, I am of the opinion that the purchase was made on the basis of confederate money. The exception is therefore overruled.

The third, fourth, and fifth exceptions of the complainant insist that the commissioner erred in not fixing the true value of the house and lot at an amount higher than three thousand dollars. I am of the
12 opinion that the report is not subject to the objection; and the exceptions are therefore overruled.

All the exceptions of the defendant insist that the estimate of the commissioner of the true value of the property at the time of the sale was excessive, and not justified by the evidence. The testimony is very conflicting, and the commissioner adopted no doubt the proper course in taking the average estimate as the true value of the property. Had the evidence been directed to the point of ascertaining the value of seven thousand dollars in confederate money, in purchasing the ordinary productions of the country, at the time the purchase was made, I think a more satisfactory result might have been reached, and one that would have been less liable to the objection made in complainant's first exception

Several of the witnesses stated that, in consequence of the great demand for houses and lots by refugees, in 1863 and 1864, their values advanced; but no witness attempts to say how much; and from an examination of the prices of such property as proved before the commissioner, both before and during the war, it appears that they were
13 less affected by the depreciation of the currency than any other species of property, and I think it was a mistake to ascribe their enhanced value entirely or principally to the demand for them. I think it would be more in accordance with the fact to say that the depreciation in the value of houses and lots in Greenville was not as great as it would have been from the great demand for them by refugees, than to say that their values advanced. And I therefore think the commissioner erred in adding twenty-five per cent. on the average estimate of the property. The opinion of the court is, after a careful consideration

of all the evidence, that the true value of the house and lot at the time of sale was two thousand five hundred dollars; and so much of the commissioner's report as conflicts with this opinion is overruled.

It is ordered and decreed that it be referred to the commissioner to ascertain the amount due on the sealed note, reduced to two thousand five hundred dollars, and that all payments of interest in confederate money be reduced in the same proportion; and that the parties be at liberty, at the foot of this decree, to take such orders as may be
14 necessary to carry the same into execution by foreclosing the mortgage or otherwise.

Subsequently, to wit, on the 16th day of January, 1868, the following report was filed:

To their honors the chancellors of the said State:

The commissioner to whom it was referred to ascertain and report the amount due on the sealed note of Mary Raymond to William M. Thomas, reduced to two thousand five hundred dollars, begs leave respectfully to report as follows: He finds that said note was executed on the 1st day of September, A. D. 1863, and to the 16th day of January, A. D. 1868, there are four years, four months, and fifteen days; the interest, therefore, is $765.62, which added to the principal makes the amount of principal and interest due on said sealed note on the 16th day of January, A. D. 1868, $3,265.62. The costs the commissioner finds to be $105.62, making total amount of principal, interest, and costs $3,371.24.

All of which is respectfully submitted.

J. P. MOORE,
Commissioner, G. D.

JAN. 16TH. 1868.

15 On the 25th day of January, 1868, the following decretal order was filed, to wit:

Bill to foreclose mortgage.

WILLIAM M. THOMAS
vs.
MARY RAYMOND. } In equity. Greenville, S. C.

On hearing the report of the commissioner in this case it is ordered that the same be confirmed, and that unless the defendant, Mary Raymond, do pay the complainant, William M. Thomas, the sum of three thousand two hundred and sixty-five dollars and sixty-two cents, with interest on the original sum of twenty-five hundred dollars from the 16th of February, 1868, and the costs of this suit, on or before sale-day in March next, the commissioner shall proceed to sell the house and lot on that sale-day, or some other convenient sale-day thereafter, at public auction to the highest bidder, for cash, giving twenty-one days' previous notice of the sale in one of the Greenville newspapers.

It is further ordered that unless the payment is made as above directed, that the defendant's equity of redemption in the mortgaged premises be forever foreclosed.

And it is also ordered and decreed that when the commissioner receive' the purchase money, that he pay over to the complainant, after first satisfying the costs, the sum of three thousand two hundred and sixty-five dollars and sixty-two cents, with interest as above stated, and

the remainder of the purchase-money, if there be any, to the defendant. But in case there should not be enough of the purchase-money, after
16 satisfying the costs, to pay the complainant the sum reported to be due him, then he shall be allowed to enroll his decree and issue execution against the defendant for the balance.

J. P. CARROLL.

22D JANUARY, 1868.

On the 28th February, 1868, General Canby, the then military governor of South Carolina, issued the following order:

HEADQUARTERS SECOND MILITARY DISTRICT,
Charleston, S. C., February 28, 1868.

[Special Orders No. 50.—Extract.]

* * * * * * *

VIII. It appearing that John P. Moore, esquire, commissioner in equity for Greenville district, S. C., is proceeding to sell the property of Mrs. Mary Raymond, under a decree in equity founded on a cause of action arising between the 19th day of December, 1860, and the 29th day of April, 1865, in violation of the provisions of General Orders No. 10, (1867,) as modified by General Orders No. 164, (1867,) it is hereby ordered that the said John P. Moore be, and is hereby, suspended as commissioner in equity until further orders.

The commanding officer of the post of Laurensville is charged with the execution of this order.

* * * * * * *

By command of Brevet Major-General Ed. R. S. Canby:

LOUIS V. CAZIARC,
Aide-de-Camp, Act'g Ass't Adj't Gen'l.

Official:
LOUIS V. CAZIARC,
A. D. C., Act'g Ass't Adj't Gen'l.

17 And subsequently the following military order was issued, to wit:

HEADQUARTERS SECOND MILITARY DISTRICT,
Charleston, S. C., May 23, 1868.

[Special Orders No. 120.—Extract.]

* * * * * * *

IX. Paragraph VIII, Special Orders No. 50, dated headquarters second military district, February 28, 1868, suspending John P. Moore, esquire, as commissioner in equity for Greenville district, S. C., is hereby revoked, and he will be reinstated in the discharge of his official duties.

It appearing to the satisfaction of the general commanding that a decree or decretal order has been made in equity by the honorable William D. Johnson, one of the chancellors of the State of South Carolina, in the case of William M. Thomas vs. Mary Raymond, whereby the sale of certain premises was ordered, in violation of the provisions of paragraph 1, General Orders No. 164, (1867,) modifying General Orders No. 10, (1867,) it is hereby ordered that said decree or decretal or-

der be set aside, vacated, and annulled, and that all proceedings in said suit be stayed until further orders.

The commanding officer of the post of Laurensville, South Carolina, is charged with the execution of this order.

* * * * * * *

By command of Brevet Major-General Ed. R. S. Canby.

(Signed) LOUIS V. CAZIARC,
Aide-de-Camp, Act'g Ass't Adj't Gen'l.

18 Afterwards the said commissioner in equity, in defiance of the above-recited order, went through the form of a sale, and reported as follows, to wit:

Bill to foreclose mortgage.

WM. M. THOMAS
vs.
MARY RAYMOND. } In Equity. Greenville.

To their honors the judges of the said State:

The commissioner begs leave respectfully to submit the following report of sales in the above case:

In obedience to the decretal order of Chancellor Carroll, he sold the house and lot described in the bill, for cash, on sales-day in December, first having advertised the same for twenty-one days in the Greenville newspapers.

House and lot bought by Isaac D. Gaillard, for..... $1,005 00
Received from purchaser, cash..... 1,005 00

All of which is respectfully submitted.

J. P. MOORE,
DEC. 4, 1868. *Commissioner, G. C.*

THE STATE OF SOUTH CAROLINA,
Charleston County, First Circuit:

To the honorable R. B. Carpenter, judge of the court of common pleas, in and for the first circuit:

The humble petition of Mrs. Mary Raymond, widow lady, sheweth unto your honor:

19 That during the late war she took refuge with her little granddaughter in the town of Greenville, in this State, and in the summer of 1863 bargained with W. M. Thomas, of that town, for the purchase of a small house and lot situated therein, the same to be paid for at once in confederate treasury notes; that afterwards the terms of said bargain were altered by the vendor, and he insisted that your petitioner's purchase should be made on a credit, to be secured by a mortgage of the purchased premises.

That your petitioner, under the pressure of the circumstances in which she was placed, acquiesced with great reluctance in this change, and finally gave her single bill or note, bearing date the 25th day of August, 1863, promising to pay to the said Wm. M. Thomas, six months after ratification of a treaty of peace with the United States, or sooner, at the option of the payee, the sum of seven thousand dollars, with interest annually from the first day of September, 1863, and she secured payment of said note or bill by a mortgage of the purchased premises, bearing the same date.

That on the twenty-eighth day of May, 1866, the said Wm. M. Thomas filed his bill in equity, in Greenville district, for a foreclosure of said mortgage against your petitioner.

That by an ordinance of a convention of the people of South Carolina in 1865, which has been ever since held to be binding in law and has been enforced by the courts, it was provided that in all such contracts as the one above set forth it shall be lawful for either party to show by testimony the true value and real character of the consideration of such contract at the time it was made.

That after various proceedings from time to time, a final decree was made in the cause at Greenville, by the chancellor then presiding, for the sum of three thousand two hundred and sixty-five $\frac{62}{100}$ dollars ($3,265.62) and costs of suit.

That under said decree the premises, as your petitioner understands and believes, have been sold, and thereupon, from the sale-money of the same, for which a decree was established for more than three
20 thousand dollars, there has been deducted, on the 9th day of December, 1868, the sum of eight hundred and sixty-two $\frac{88}{100}$ dollars ($862.88) only, and there remains now due thereon, as will appear by a statement hereinafter referred to, the sum of two thousand six hundred and fifty-three $\frac{06}{100}$ dollars, ($2,653.06,) which, if said decree is valid, is binding upon other property of your petitioner, so that, under the contract of August, 1863, she has lost (or it has been taken from her) the whole consideration thereof, while only one-fourth part of the contract is satisfied and three-fourths remain unsatisfied.

And your petitioner further shews unto your honor, that on the 11th day of April, 1867, a military government being established and military law and military orders prevailing and being the supreme law in and over the State of South Carolina, Major-General Daniel E. Sickles, then being in supreme command, did, by a general order known as "Order No. 10," direct and command that proceedings then pending on causes of action arising between the 19th day of December, 1860, and the 15th day of May, 1865, should be stayed, and no suit or process should be thereafter instituted or commenced for any such causes of action.

And your petitioner further shews, as appears above, that her bill or note was one of the causes of action whereon proceedings were forbidden; that at the time the final proceedings in this cause were carried on and the decree made, and for some time before, the said military order and law were in full force and vigor, and the proceedings and decree as aforesaid, made on the 22d day of January, 1868, were in plain defiance of said order and the authority thereof; and therefore, for want of jurisdiction of the court to proceed at that time therein, the same is and ought to be without lawful force, and void.

And your petitioner further shews unto your honor, that on the 23d day of May, 1868, Major-General Edward R. S. Canby, having succeeded General Sickles in command, and being then in command,
21 did then issue a special order known as "Special Order No. 120," and thereby it appearing that the aforesaid decree had been made in violation of general orders, it was ordered that said decree be set aside, vacated, and annulled, and that all proceedings in said suit be stayed until further orders. All which will appear by reference to said special order herewith exhibited.

And your petitioner alleges and says that unfair advantage has been taken of her in the premises, which is manifest upon the face of the proceedings, by which it has been adjudged that the true value of the

consideration of the said contract was in 1863 more than twice its value in 1868; whereas the truth is that its value in 1863 was seven thousand dollars ($7,000) in confederate treasury notes, which were worth at that time in good and lawful money less than the sum of five hundred dollars ($500) and no more, which sum with lawful interest she has always been willing to pay.

And she further shews unto your honor that the said decree, thus wrongfully taken in Greenville County, has been transmitted to the sheriff of Charleston County, with instructions to enforce payment thereof by levy and sale of your petitioner's property.

That, by a statement thereof furnished by the said sheriff, it appears, as above alleged, that there is still due the sum of two thousand six hundred and fifty-three $\frac{06}{00}$ dollars ($2,653.06), and unless restrained by the order and mandate of your honor, the said sheriff will, she verily believes, proceed to enforce the same.

Wherefore your petitioner humbly prays that your honor will take her cause into consideration, and that the said sheriff, E. W. M. Mackey, may be restrained from further proceedings under said decree, and that all proceedings in the said cause of foreclosure, taken after the
22 11th day of April, 1867, and between that date and the extinction of military law and restoration of civil law, may be vacated and set aside, and the said cause restored to the same plight and condition as it was on the 11th day of April, A. D. 1867, or that the said W. M. Thomas and the said sheriff, and all other sheriffs and persons whatsoever, be perpetually restrained and enjoined from further enforcing said decree.

And your petitioner will ever pray, and so forth.

CAMPBELL & SEABROOK,
Solicitors for Petitioner.

Personally appeared before me Henry H. Raymond, and being duly sworn he says that he has read the foregoing petition in behalf of his mother, Mrs. Mary Raymond, the petitioner, and he says that as to the principal matters and things therein stated he knows them to be true, and as to others he believes them to be true and that they are of record.

H. H. RAYMOND.

Subscribed and sworn to before me this 2d day of January, A. D 1869.

HENRY SEABROOK,
Notary Public.

23 Charleston County.

Ex parte Mrs. Mary Raymond.

IN RE WM. M. THOMAS *vs.* MARY RAYMOND. } Petition for injunction or to vacate decree at Greenville.

On motion of Campbell & Seabrook, for petitioner, ordered that the prayer of the petition be amended so that the petitioner will pray that the original cause be restored to the same plight and condition as it was before the rendition of the decree of Chancellor Johnson, referred to in the order of General Canby recited in the petition, and that the said W'm M. Thomas and the said sheriff, and all other sheriffs and persons whatsoever, be perpetually restrained and enjoined from further enforcing said decree.

by her, may be dissolved, and that he may be allowed to proceed to collect his debt, which has been so long delayed, whilst the petitioner has for five or six years enjoyed the use of his property without paying either principal or interest, or any portion of either.

PORTER & CONNER,
PERRY & PERRY,
Defendant's Solicitors.

Personally comes William M. Thomas before me, and being duly sworn, makes oath that the facts and circumstances stated in his
28 answer are true so far as the same come within his knowledge, and that those stated on the information of others he believes to be true.

WM. M. THOMAS.

Sworn to and subscribed this 19th day of January, 1869.
W. McCHAMBERS.

True copy:

A. C. RICHMOND,
C. C. C. P. Charleston County.

In chancery.—Charleston.

IN RE MARY RAYMOND
vs.
WM. M. THOMAS ET AL.

ISAAC D. GAILLARD
ads.
MARY RAYMOND. } Petition for injunction, &c.

To his honor R. B. Carpenter, judge of the first circuit:

The separate answer of Isaac D. Gaillard, one of the defendants to the petition filed against himself and others by Mary Raymond.

This defendant now, and at all times hereafter saving and reserving to himself all manner of benefit of exception to the many errors, uncertainties, and insufficiencies of the petition filed against him, for answer thereto, or to so much thereof as he is advised it is necessary or material for him to answer, answering, says:

That he knows nothing of the statements of the petition as to the sale of the house and lot by Thomas to Raymond, the execution of the note and mortgage by Raymond to Thomas, the bill in equity at Greenville for the foreclosure of the mortgage and the decree of the chancellor thereunder, the order for the sale of the house and lot, and the promulgation of special order No. 120 by General Canby, except from the information of others.

29 This defendant, further answering, says: That on sales-day in December, A. D. 1868, the house and lot was offered for sale by the commissioner in equity for Greenville County, to the highest bidder, for cash; that he was informed that said sale was made under a decree of Chancellor Carroll for the foreclosure of the mortgage executed by Raymond to Thomas; this defendant became the purchaser of the house and lot at said sale for the price of one thousand and five dollars, cash; that he paid the purchase-money to the commissioner for Greenville County on the day of the purchase, and received from the commissioner titles for the same.

This defendant, further answering, says: That he was informed and believed that the proceedings in the court of equity, by which the mortgage was foreclosed, were regular, and in accordance with the rules and practices of that court, and in full conformity to the laws of the State of South Carolina. That upon the announcement of the circuit decree by Chancellor W. D. Johnson, the petitioner in this suit, Mrs. Mary Raymond, (who was the defendant in the equity suit filed against her by Wm. M. Thomas,) did not appeal from the circuit decree, but Thomas did appeal, and upon the appeal being heard by the appeal court of South Carolina that court dismissed the appeal and confirmed the circuit decree; that thereupon a motion was made before Chancellor Carroll, at chambers, for an order for sale under the circuit decree confirmed by the appeal court, which motion the petitioner did not resist, and under said order for sale this defendant purchased the house and lot.

This defendant, further answering, says: That he was informed and believed that upon the restoration of this State to the Union of the United States the authority and power of the military commander ceased, and that the proceedings in the case of Thomas vs. Ray-
30 mond, which had been stayed by General Canby, were restored, and the various orders and decrees made by the chancellors and confirmed by the supreme court of the State were in full force and virtue; in any event this defendant was an innocent purchaser, for a valuable consideration, and submits to your honor his rights and equities in the premises, and prays your honor, if your honor shall decide that the Special Military Order No. 120 of General Canby was in full force and the law of the State governing this case after the restoration of civil government in South Carolina, and that the decrees of Chancellors Johnson and Carroll, and the orders of the supreme court of the State confirming those decrees, were null and void by reason thereof, and that the sale made thereunder is illegal and void, to order and decree that Wm. M. Thomas, the complainant in the suit of Thomas vs. Raymond for the foreclosure of the mortgage of Raymond to Thomas, under the decree for sale in which case this defendant purchased, and also a defendant in this case, be required to subrogate this defendant to all the rights which he enjoyed before said sale, and that be refunded to this defendant the sum of one thousand and five dollars and interest on the same from the 4th day of December, A. D. 1868, being the amount of the purchase-money paid by this defendant for the house and lot, before he be permitted by this court to commence an action de novo for the foreclosure of the mortgage executed by Mrs. Mary Raymond to the said Wm. M. Thomas.

Having fully answered, this defendant prays to be hence dismissed with his reasonable costs and charges in this behalf sustained. And he will ever pray, &c.

JAMES P. MOORE,
Defendant's Solicitor.

31 STATE OF SOUTH CAROLINA,
Abbeville County:

Personally appears Isaac D. Gaillard before me and makes oath that the matters and things stated in his foregoing answer are true where stated of his own knowledge, and believed by him to be true where stated upon the information of others.

ISAAC D. GAILLARD.

Sworn to before me this 24th day of July, A. D. 1869.
J. A. LELAND, *M. A. C.*

A motion was afterwards made to dissolve the injunction hereinabove recited, which was refused, and by a further order, made in July, 1869, the said injunction was made perpetual. No copy of this latter order is here inserted, because it is neither on the file nor entered on the journal. But an appeal was immediately taken therefrom, as will appear by the following:

RAYMOND *vs.* THOMAS. } Petition for injunction and relief.

An appeal is taken from the order of Judge Carpenter refusing a dissolution of the injunction in this case, upon the following grounds:

32 1st. That the order of a military commander under the reconstruction acts of Congress could not annul or set aside a decree of the court of chancery rendered and filed before his appointment as commander, and whatever power such military commander may have had in the premises ceased to operate upon the restoration of civil government.

2d. That the order of General Canby was founded upon a mistake, inasmuch as the sale under foreclosure was no violation of Order No. 10 of General Sickles, no part of the interest upon the bond and mortgage having been at any time paid.

3d. That the order of General Canby did not, from its terms, set aside the decree settling the indebtedness between the parties, but only the decretal order directing the sale; that the former was judicial and the latter administrative, and that the professed object of the military orders, both of General Sickles and General Canby, was simply to suspend sales under execution and the enforcement of process against person and property, not to unsettle or set aside adjudications of right.

4th. That the interference of the military authority with the recorded decrees of the court of chancery was against all law and constitutional right, and ought not to be upheld by the civil courts.

B. F. PERRY,
PORTER & CONNER,
Defendant's Solicitors.

JULY, 1869.

33 THE STATE SOUTH CAROLINA.

In the supreme court, first circuit, before Judge Carpenter.

Ex parte Mrs. Mary Raymond.

IN RE MARY RAYMOND *ads.* WM. M. THOMAS. }

Motion to dissolve injunction before Judge Carpenter refused July, 1869.

In the supreme court, January 21st, 1870.

On motion of Mr. Campbell for appellee, and on production of the notice and grounds of appeal, and it appearing that the appellant has failed to prosecute the same, it is now ordered that the cause be docketed.

F. J. MOSES, *C. J.*

JANUARY 21, 1870.

A true copy from the minutes.
Attest:

ALBERT M. BOOZER,
Clerk of Supreme Court.

34 In December, 1870, the plaintiff, without notice to defendants, obtained the following order, to wit:

W. M. THOMAS
vs.
MARY RAYMOND. } In equity. Bill to foreclose mortgage, &c.

It appearing to the satisfaction of the court that the defendant, Mary Raymond, has departed this life since the filing of the bill in this case and the hearing of the same, it is ordered on motion of Perry & Perry, complainant's solicitors, that the complainant have leave to amend his bill by making H. H. Raymond, the executor of the defendant, a party defendant to this case.

JAMES L. ORR.

DECEMBER 9, 1870.

Afterwards, on the 3d day of February, 1871, the defendant, H. H. Raymond, was served with copies of the following summons and complaint:

THE STATE OF SOUTH CAROLINA,
County of Greenville:

Court of common pleas.

WILLIAM M. THOMAS, PLAINTIFF,
against
HENRY H. RAYMOND, EXECUTOR, &C., DEFENDANT.

Summons for relief.—Complaint served.

To the defendant, Henry H. Raymond, executor, &c.:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to
35 serve a copy of your answer to the said complaint on the subscribers at their office, on Main street, in the city of Greenville, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief demanded in the complaint.

Dated Greenville C. H., January 30th, 1871.

PERRY & PERRY,
Plaintiff's Attorneys.

THE STATE OF SOUTH CAROLINA,
Greenville County:

In common pleas.

WILLIAM M. THOMAS
vs.
HENRY H. RAYMOND, EXECUTOR OF MARY RAYMOND, deceased. } Bill for foreclosure of mortgage, &c.

To his honor James L. Orr, judge of the eighth circuit:

Humbly complaining, showeth unto your honor the plaintiff, William M. Thomas, as follows:

The complainant filed his bill in the court of equity on the 28th of May, 1866, against Mary Raymond to foreclose a mortgage set forth in the bill, and obtained a decree of the chancellor ordering a sale of the premises described in the said mortgage and set forth in the bill. In obedience to this decree the house and lot mortgaged was duly sold and the money paid to the commissioner of this court by the pur-
36 chaser, and so reported to the court. But before the confirmation of the sale the military authorities in South Carolina interfered and ordered the decree of the chancellor to be set aside, and all proceedings in the suit were suspended.

Since this proceeding of the military authorities the defendant, Mary Raymond, has departed this life, leaving a will duly executed, in which she appointed Henry H. Raymond her executor. At the September term of this court the complainant obtained an order of court to amend his bill and make the said executor, Henry H. Raymond, a party to the same.

The complainant therefore prays that a writ of subpœna may issue, directed to the said Henry H. Raymond, executor of the last will and testament of Mary Raymond, deceased, and commanding him to be and appear in this honorable court, and true and perfect answer make to all and singular the allegations herein contained.

And the complainant further prays this honorable court to confirm the sale of the said mortgaged premises, and grant such other and further relief in the premises as to your honor shall seem meet and proper. And your orator will ever pray, and so forth.

PERRY & PERRY,
Complainant's Solicitors.

37 STATE OF SOUTH CAROLINA,
County of Greenville:

HENRY H. RAYMOND, EXECUTOR OF Mary Raymond, deceased, *ads.* WILLIAM M. THOMAS.

Answer of Henry H. Raymond to bill or complaint of foreclosure of mortgage.

1. Henry H. Raymond, of the city of Charleston, in said State, says he has been served with a summons and copy of the bill or complaint in the above-entitled cause, as if he were the defendant therein named and intended, and thereupon he says that he is not the executor nor the administrator of Mrs. Mary Raymond, deceased, and he is not in law chargeable as such, but he admits that he is in possession of her estate and is ready to pay all her just debts and liabilities when properly required so to do; but he denies that he is bound to answer to this complaint, or that any binding judgment can be taken thereon, against him or his or her estate.

2. Nevertheless he says he knows that his late mother, Mrs. Mary Raymond, in her lifetime did purchase from the plaintiff, some time in the month of August, 1863, a lot and premises in the town of Greenville, for the sum of seven thousand dollars ($7,000) of Confederate
38 States treasury notes, the only currency in use or circulation; that she took a title-deed and entered into possession of the same, and so continued, either in person or by her tenants, until her

death, in the month of ————, 18—, and he is himself now, by his tenant, in possession of said premises; that his mother gave for the purchase-consideration her promissory note or bond, or undertaking of some kind, for the sum of seven thousand dollars, ($7,000;) and to secure payment of the same when it should become due she mortgaged the premises to the plaintiff, and whether the same is now due and owing will appear by reference thereto.

3. He further says that some time in the year 1866 the plaintiff commenced proceedings to foreclose said mortgage, and afterwards irregularly obtained a decree and was proceeding to execute it, when the commissioner in equity, who was proceeding to sell the mortgaged premises, was in consequence thereof suspended from his office by order of Major-General Canby, then governing the State of South Carolina, which order bears date February 28th, 1868; and afterwards, to wit, on the 23d day of May, 1868, by another order of General Canby, the decree referred to in the present bill or complaint was "set aside, vacated and annulled, and all proceedings in said suit stayed."

4th. He has been informed and believes that afterwards the plaintiff did proceed in violation of said order to enforce the said decree, and to go through the form of a sale of the premises, under the pretended authority of said decree, and after deducting the amount of the sale money (862\frac{88}{100}$) took out executions for a pretended balance due thereon amounting to the sum of two thousand six hundred and eight $\frac{36}{100}$ dollars ($2,608$\frac{36}{100}$) and lodged the same in the office of the sheriff of Charleston County, with instructions to enforce payment. That thereupon the plaintiff and the sheriff, under proceedings duly had before the court of common pleas for Charleston County were, on the second day of January, 1869, restrained and enjoined from all
39 further proceedings until the further order of said court. That afterwards said injunction was in July, 1869, by a further order made perpetual and the appeal afterwards dismissed for want of prosecution.

5th. He says further that the pretended sale, under a decree which had been "set aside, vacated, and annulled," was a vain and idle proceeding, and can in no wise be lawfully confirmed or be made of any more avail than the decree it rested upon. That the order setting aside the said decree has been legalized by an act of the general assembly of South Carolina, and the plaintiff is entitled to no relief against the same.

6th. This defendant denies all liability, and prays to be hence dismissed with his reasonable costs.

CAMPBELL & SEABROOK,
Defendant's Attorneys.

STATE OF SOUTH CAROLINA,
County of Charleston:

Henry H. Raymond, the defendant above named, being duly sworn, says that the foregoing answer is true, to his own knowledge, except as to those matters stated on information or belief, and as to those matters he believes them to be true.

H. H. RAYMOND.

Sworn to before me this 20th day of February, A. D. 1871.
CHAS. S. CAMPBELL,
Notary Public.

40 STATE OF SOUTH CAROLINA,
County of Greenville:

Court of common pleas.

WILLIAM M. THOMAS, PLAINTIFF,
against
MARY RAYMOND, DEFENDANT. } Bill to foreclose mortgage.

The humble petition of Samuel S. Marshall shows to the court here: That on the 28th day of May, A. D. 1866, the complainant William M. Thomas, filed his bill in equity to foreclose a mortgage against Mary Raymond; that the cause came on to be heard at the June term of 1868 of the said court, when a decree of foreclosure was made and the property ordered to be sold.

That the then commissioner in equity exposed said property to sale on sales-day, in December A. D. 1868, and the same was knocked down to Mr. Isaac D. Gaillard, he being the highest and last bidder, at ($1,005.00) one thousand and five dollars, for the wife of the said Isaac D. Gaillard, the kinswoman and cestui que trust of your petitioner; that by an arrangement between your petitioner and his said cestui que trust the said property was transfer'ed to your petitioner in his own right.

41 That the sale at auction being made by the officer of the court and by an order of the court, no question whatever arose in the mind of the bidder or that of your petitioner as to the legality or validity of the sale, and the amount of the purchase-money paid and the commissioner's deed taken for the property, and as your petitioner is informed and believes, after the payment of the costs of the suit the balance of the money was paid over to the complainant's solicitors. Since then some vexatious questions have arisen between the aforesaid complainant and defendant, and pending their litigation your petitioner has suffered gr'eviously in consequence of the uncertainty which has been thrown around the transaction, whereby he is unable to collect the rents to which he is entitled, whilst he has been out of the use and the profit of his money.

In the meanwhile, too, the property is wasting greatly for want of repair.

Wherefore your petitioner prays that his title may be confirmed, and he let into the full use of the property; that he may be paid the legal interest on his purchase-money out of whatever decree may be made, and that he have his reasonable costs in this behalf.

And, as in duty bound, your petitioner will ever pray, and so forth.

EARLE & BLYTHE,
Sol'. pro Pet.

42 Greenville County.—In common pleas.

W. M. THOMAS
vs.
MARY RAYMOND AND HENRY H. RAYMOND. } Bill to foreclose mortgage.

On hearing the pleadings in this case and the argument of council, and the report of the commissioner on sales, it is ordered that the same be confirmed, and that the purchaser have the writ of assistance of this court to obtain possession of the premises. It is further ordered that the injunction heretofore granted by Judge R. B. Carpenter be dissolved,

and that the plaintiff have leave to enter up judgment against Henry H. Raymond, who admits that he has the whole estate of Mary Raymond in his hands, for the balance due the plaintiff after deducting the purchase-money for the house and lot sold by the commissioner according to the decretal order of Chancellor Johnson in this case. It is further ordered that the defendant do pay to the purchaser, at the commissioner's sale, the interest on the purchase-money to date, together with the costs of these proceedings.

JAMES L. ORR.

SEPTEMBER 20TH, 1872.

43 The defendant H. H. Raymond received no notice of the said order until the 9th day of November, 1872, when there were served on him copies of the summons and complaint in an action entitled "S. S. Marshall, plaintiff, against H. H. Raymond, defendant," and in which the rendition of said order was mentioned. Whereupon the said defendant served the following:

Henry H. Raymond, the defendant in the above-entitled cause, appeals from the order of his honor Judge Orr, of date September 20, 1872, upon the following

Grounds of appeal.

I. Because the decree or decretal order under which appellant's house in Greenville was ordered to be sold, and thereby was sold, was long before said sale lawfully set aside, vacated, and annulled, and all proceedings in said suit stayed; after which all proceedings, including the sale and the order confirming it are illegal and of no lawful force or vigor.

II. Because the injunction made by Judge Carpenter and dissolved by this decree was a perpetual injunction upon a full hearing, was appealed from, and the appeal abandoned or dismissed for want of prosecution, and such an injunction it was not competent for another circuit court to dissolve.

CAMPBELL & SEABROOK, and
JAMES BIRNIE,
Attorneys for H. H. Raymond.

Filed Nov. 19, 1872.

44 STATE OF SOUTH CAROLINA,
Greenville County:

WM. M. THOMAS
vs.
MARY RAYMOND AND HENRY H. RAYMOND. } Bill to foreclose mortgage.

Plaintiff filed his bill on the 28th May, 1866, against the testatrix of defendant, to foreclose a mortgage based upon the following note:

"$7,000. GREENVILLE, So. CA., *August 25th*, 1863.

"Six months after the ratification of a treaty of peace with the United States of America (or before, at the option of the payee) I promise to pay William M. Thomas seven thousand dollars, with interest thereon, payable annually, from the 1st September, A. D. 1863.

"Witness my hand and seal.

"MARY RAYMOND." [SEAL.]

The defendant having answered, on the 9th July, 1866, Chancellor W. D. Johnson made this order of reference:

On hearing the pleadings and arguments of counsel in this case, and on motion of C. D. Elford, defendant's solicitor, it is ordered that it be referred to the commissioner of the court to ascertain and report the true value of the lot for which the sealed note of Mary Raymond, and the real character of the consideration of said sealed note, for seven thousand dollars was given at the time the said note was made, according to the ordinance of the convention of this State, passed the 27th day of September, 1865.

45 WILLIAM M. THOMAS *vs.* MARY RAYMOND. } Bill to foreclose mortgage.

Report of the commissioner.

To their honors the chancellors of the said State:

The report of the commissioner in this case respectfully showeth: That in obedience to the order of his honor Chancellor Johnson he has held a reference in the above case to ascertain and report the true value of the lot for which the sealed note of Mary Raymond for seven thousand dollars was given, and the real character of the consideration of said sealed note at the time said sealed note was made, according to the ordinance of the convention of this State, passed the 27th day of September, A. D. 1865.

A good many witnesses have been examined as to the cost of the lot and improvements, both before and since the war, as to its value in 1863 in confederate money, and also in good currency, and as to its relative value compared with other lots in Greenville sold during the same year, some for cash, (confederate money,) and one sold payable after the war. The commissioner finds it very difficult to arrive at any definite conclusion as to what was its real value at the time it was sold, on account of the conflicting testimony of the witnesses, men who ought to know the value of property and of the cost of building.

Mr. Cline, a witness on the part of complainant, thinks the improvements on the lot must have cost $2,000, and this opinion is based upon estimates made recently. Mr. Arthur, another one of the com-
46 plainant's witnesses, says he offered complainant, about the time of the fall of Fort Sumter, 1861, $2,500 for the place, and that he would have given $3,000, but complainant asked $4,000; this was for another party. Col. Goodlet, another witness of complainant, says the place was worth at least $3,000; these values were in 1861.

Now, per contra, Mr. Hammett, a witness on the part of defendant, thinks the place was worth $1,500. Mr. David, another witness on same side, makes same estimate, and Mr. McKay, on same side, says $2,000; this is the value at the present time.

Now, as to the prices witnesses put upon the property at the time it was sold, in confederate money: Mr. Hammett says $3,000; Mr. David says the same; Mr. Goodlet says from $10,000 to $12,000; Mr. Arthur says from $12,000 to $13,000. How can the commissioner reconcile these statements of opinion?

Again, as to the relative value of the lot in question compared to the Croft house and brick house, (Robinson's,) James Goodlet's house, and McConnell's house, which were sold in 1863, the testimony is that the Croft house sold for $16,000, the brick house for $17,000, the James

Goodlet house for $9,000, and the McConnell house for $5,500. Now, as to the testimony of relative value of the lot in question as compared to the above houses and lots. First take the testimony of Mr. Arthur: "Thinks if put up the Croft house would have sold for something more; would have made a difference of some $4,000 or $5,000; don't think there would have been much difference if a party wanted it for the use of his family." Col. Goodlet says: "Sold his house and lot for $12,000, which he offered to complainant for the note in suit; says the McConnell house was sold in 1862 for $4,500, payable after the war; that same house was sold in 1863 for $5,500 cash, (confederate
47 money;) last house is on Main street, adjoining the business portion of the town; is a fine large house; that it would bring twice as much as complainant's; thinks complainant's house more marketable, and for his own use would rather have it; don't think there is much difference between the house he sold and complainant's; the McConnell house was sold by Hill to McConnell in Savannah."

Thus it will be seen that there is as great a difference in the opinion of the witnesses as to its value in confederate money as of its value both before and since the war.

It is in evidence that the lot originally cost one Smith $900; that complainant paid Smith $1,250, and did a great deal of repairs.

The commissioner has concluded that where there is such a difference of opinion among the witnesses as to its value, that the only course left him to pursue is to try and strike a medium course between them.

Thus Mr. Hammett says $1,500, Mr. David $1,500, Mr. McKay $2,000, Mr. Arthur $3,000, Col. Goodlet $3,000, and Mrs. Thurston $3,000 to $3,500, making $14,000 to $15,000, which, divided by 6, will give as an average price of from $2,333.33 to $2,500.

It is agreed by most of the witnesses that the great demand for houses in 1863, on account of the influx of refugees, caused a considerable advance in the value of houses and lots in Greenville; some think 25 per cent., some more, some less; let us put the advance at 25 per cent. and the average value of the lot at $2,400, a medium average value from the testimony of the witnessess, and we have $3,000 as the result.

The commissioner, therefore, recommends that the true value of the lot for which the sealed note of $7,000 was given was $3,000 1st September, 1863, the date of the note.

48 The commissioner having considered the exceptions of the complainant and defendant, overrule' the same.

All of which is respectfully submitted.

J. P. MOORE, *C. C. C. P.*

WILLIAM M. THOMAS
vs.
MARY RAYMOND. } In equity. Bill to foreclose mortgage.

Testimony on reference for plaintiff.

Mrs. S. W. THURSTON sworn:

First conversation had with Mrs. Raymond in the house she had purchased from Mr. Thomas, soon after her going into it, she spoke of not buying property at Spartanburg; she said she could have bought it cheaper; thought she had paid a high price for the property. Mrs. Thomas remarked that if she did not want the property Mr. Thomas would take it back. She replied she did not want it, but Mr. Thomas would not take the money for it; said the property was very high.

Next time she called to pay the interest on the note after the interest was due; Mrs. Thomas was not at home; witness remarked that Mrs. Thomas did not have the note, Mr. Thomas had carried it to Charleston; that Mrs. T. would write for it and get it as soon as she could. Mrs. Raymond said Mr. Thomas was bound to take the interest, but would not take the money for the principal; would not take confederate
49 money, is her impression. Mrs. Thomas remarked that the price was not too high. The only objection, as witness understood, was that Mr. Thomas would not take confederate money. House has five rooms and pantry; lot has something over two acres; has a fine well of water. Mrs. Raymond remarked that she (Mrs. Thomas) could have the house after the war. The house is new and nicely finished inside.

Cross-examined:

Mrs. Raymond is an old lady; thinks she is over seventy years of age; was a stranger here; a refugee at Mr. Mills'.

SUSAN THURSTON.

The defendant's attorney gave notice that he would file objections to the hearsay testimony of the witness.

The complainant offers as testimony a letter of Mrs. Mary Raymond, date' Oct. 16th, 1865:

Major THOMAS:

DEAR SIR: Your note, dated the 12th, I only received this morning, and hasten to answer it. I cannot comply with your request. My son has been disappointed in coming up, who transacts my business, and I cannot get down; the journey is too fatiguing for me. But you must have no apprehension concerning this business. I write this day for my son to come up immediately, so that you will not have long to wait. I regret extremely that I am so circumstanced at present, or you should not be thus troubled. The whole business should be settled at once.

Yours respectfully,

MARY RAYMOND.

GREENVILLE, *October 16th*, 1865.

50 WILLIAM M. THOMAS } On reference, July 7th, 1866.
vs.
MARY RAYMOND. }

Testimony for defendant.

HENRY P. PAMMETT, sworn, says:

That he lives in sight of the house and lot in question; has passed it frequently; has never examined the place with any idea of giving an opinion; thinks the house and lot worth $1,500; has not dealt much in town property; has one town lot and has thought of its value prior to this.

Cross-examined:

Knows nothing about the cost of the house, nor of its inside finish; thinks the house could be built for $1,000; don't know anything about the outbuildings.

In reply:

Thinks the house is a one-story house; is weather-boarded outside, and covered with shingles or boards; thinks the house is from 34 to 36

feet square; a piazza; thinks the work is plain; has never priced property in that neighborhood, with regard to buying.

Cross:

Cannot say with any certainty what outbuildings are on the place; thinks that there is a kitchen made of wood in the yard—made out of wood; don't know of any other outhouses. The lot closed with plank fence; fence is from 300 to 400 feet long; don't know what would cost; don't know what kitchen would cost; don't know what land in
51 that part of the village is selling for per acre; don't know whether or not there is a well of water on the place; owns a vacant lot in town of 22 acres; gave $5,000 in confederate money; same distance from court-house as the property in question; is an old field; no fence around it; was a fence around it when purchased; recollects two sales of town property, made this year; one sold by Mr. Mills to Dr. Marshall, and one by Lopez to Gains. Marshall gave $5,000 for his, and Gains $4,500. Mr. Gower also sold a place for $4,500; sold last fall, in October or November; property was selling higher in 1863 than now; was in greater demand on account of refugees; generally brings a higher price upon a credit; at present a greater difference would be made on a credit than cash; thinks in 1863 it was almost impossible to get building-materials. His estimate of the property was based upon its present cash value; can't say what the property was worth in 1863, at the time it was sold, in any other than confederate currency.

In reply:

In 1863 the property was worth $3,000, in confederate currency; the 22-acre place of witness is one-quarter or a mile from depot; is on the road; is worth a great deal more; thinks Mills' and Lopez's houses are worth more than the house and lot in question.

H. P. HAMMETT.

J. A. DAVID, sworn, says:

Don't know all the particulars of the property; lives next door to it; has lived there for twelve years; passed every day; saw the building going on as he moved past; have been in the building several times, but did not notice particularly the dimensions; is a one-story building of wood; is shingled and the piazza is covered with tin; don't know the number of rooms; thinks it is about 35 feet square. (The question objected to as to the value of the property now.) Thinks the
52 house and lot worth somewhere in the neigeborhood of $1,500; thinks it was worth some $3,500 in confederate money at the time it was sold; was worth before the war $1,200 in specie currency.

Cross-examined:

Is at a loss what to say it was worth in specie in 1863. On the lot is a dwelling, small double kitchen, stables, with barn attached, and presume a smoke-house; is a well of water, well-house, ice-house. Material was high in 1863. Don't think he could have put up the houses in 1863 for less than $3,000; is a pretty location—on Buncombe street; lot was worth, in 1863, from $800 to $1,000 in confederate money; paid $1,100 for a two-acre improved lot, in front and across the street, in June, 1862. The fence, in 1863, might have cost $500 or less; declines answering as to value of the improvements; knows that in 1863 there was a great demand for property, and property was more valuable then than now.

In reply:

Paid confederate money for his purchase of house and lot from Renwick; paid a note in currency (greenbacks) lately, which was given for

property in May, 1863, at $30 per acre; thinks said property would have brought $75 per acre in confederate money.

J. A. DAVID.

R. McKAY sworn:

Has been several times on the property while Mr. Thomas was there, and since Mrs. Raymond was there; did not notice it particularly; was there while it was building; don't know how often he was there while it was building; don't know how many rooms there are in the house; the rooms are small; thinks the house is poorly built; the material is good, but work not good; Mr. Smith offered to sell to witness.

The question objected to—"What is the place worth now?" "Is worth about $2,000 in greenbacks." At the time Smith offered
53 the place for sale it was worth some $1,200; lives not far from the place—about a quarter of a mile; have bought and sold several houses and lots in the past eight or ten years; sold lot to Meredith in July, 1863, for $2,000 in confederate money; considered it worth almost the same in 1861. This house is nearer town than the Thomas house by a quarter of a mile, but house not so good; has four rooms, 40 feet long and 17 feet wide, with two shed-rooms about 10 feet wide.

Cross-examined:

Cannot say what the property was worth in 1863.

In reply:

Don't answer what it was worth in 1863.

ROBERT McKAY.

Complainant's witness, ROBT. GREENFIELD, sworn:

Recollects that two houses of his mother and sister-in-law was sold in September, 1863; old house of Croft was sold for $16,100, at public auction, by the C. E. G. D., for cash; don't know how much land in lot; old house, but tolerably good stables—new; good garden. The other house sold for $17,000 in confederate money; bought by witness, Mr. Sass bidding $16,500; last lot sold before the war for $3,200, and expended more than $1,000 for additions and repairs. Witness sold same house to Hahn for $22,000 in last October, 1863; house has six rooms, with fireplaces, and one small room; Hahn offered witness same house since the war for $2,000 in gold or $3,000 in greenbacks. Houses were in great demand in the summer of 1863, there being a great many refugees here; don't know anything of the value of the house and lot in question. Says on morning of sale Mrs. Shaver sold witness the $17,000 house and lot for $10,000, but a stranger could not have bought it for that.

Cross-examined:

The $16,100 lot has at least two acres; is situated in town, near
54 Episcopal church; is very desirable property; Hill paid $3,200 while in a dilapidated condition. The $17,000 is a brick house, with tin roof, nearer town than the $16,100 lot. Mrs. Raymond's house and lot is one mile from town.

ROBERT GREENFIELD.

WILLIAM M. THOMAS
vs.
MARY RAYMOND.

JULY 9.—Held reference this day.

Mrs. THURSTON, sworn, says:

That her son, H. Lee Thurston, sold the lot in question to Peter Smith, n 1855, for $750; afterwards bought another piece adjoining, thinks for

$150; lot then was nearly all in the woods; Thomas purchased the house and lot from Smith; the house was rough plastered; Mr. Thomas had it finished and painted, and also blinds put to it; complainant put a tin roof on a portion of the house; don't remember when it was done; was before the war. Mr. Thomas had the outhouses put up; put up stable, ice-house, well-house and dairy, fence-plank, cemented dairy, dug out and put up the ice-house, brick wash-place and iron kettle, finished the kitchen and added two additional rooms, laid hearth in two rooms, cut a door from library to dining-room, cleared the lot; also put up the garden; planted some fruit trees, trenched some of the garden, fence around the stables; sowed the lawn in grass; don't think it did much good; circular walks with cedars planted; small flower garden; was in complete repair when he sold it, except the front steps; thinks the place
55 was worth before the war $3,500; not less than $3,000; don't know how long Mrs. Raymond had been here before the purchase; don't know what the buildings cost when complainant purchased the lot; complainant also put up smoke-house, cow-house, and crib; crib, carriage-house, and stable under one roof.

SUSAN THURSTON.

THOMAS S. ARTHUR, sworn, says:

That in 1861 he made complainant an offer of $2,500; complainant asked $4,000; witness would have given $3,000; this was for another person. In 1864 there were a great many refugees in Greenville, and a great demand for houses. Property had increased greatly in value; can't say what per cent. of increase had taken place in property. The demand for houses was double in 1864 to what it was in 1861. It was very difficult to get a house here in 1864; can't say as to the relative value of the house in question and the Croft house and brick house of Copper Robinson, as to present habitation in 1864; don't think there would have been much difference between the Croft house if a man wanted them for use of his family.

Cross-examined:

Made the offer about the time of the taking of Fort Sumter; was buying it for an uncle, Mr. Arthur; meant the increased price on account of the increased demand; don't know of any trading in 1864 except for confederate money or credit; thinks if put up the Croft house would have sold for something more in 1864; the offer to complainant was for cash; the Croft house is larger than complainant's; the lot about the same size; the intention of the purchaser of the Croft house was to take the chimneys down, as the house needed repairs; the location of the Croft house is much better.

In reply:

56 Would have made a difference in 1864 between the Croft house and the house in question of some $4,000 or $5,000 in confederate money; thinks there was very little difference as to a refugee wanting a house to live.

THOMAS S. ARTHUR.

S. D. GOODLETT, sworn, says:

That he has been to the house in question; says it is a nicely-improved place; was one of the most convenient little places in town. A good deal of taste displayed in the construction of house and grounds. Don't know as to the improvements complainant put upon house; thinks at a low estimate it was worth $3,000 in fall of 1861. Was a great demand in 1863 and 1864 in Greenville for houses, not only in town but in country. Can't say what per cent. the increased demand would make in

the increased price of property. Was difficult to get material to build with. Sold his house and lot in town in the latter part of 1863 for $12,000. Thinks complainant made a great deal better sale than himself, as he took a note payable after the war. Offered to give complainant the $12,000 for the note of Mrs. Raymond. The lot and improvements cost witness about $3,400. Hammond sold his house and lot, payable after the war, for $4,500; thinks the last sale was in 1862. In 1863 McConnel bought same house and lot of Hill for $5,500 in confederate money.

Cross-examined:

Complainant's house and lot was worth in August, 1863, $10,000 or $12,000 confederate money. Mr. McConnel's house sold in 1863 for $5,500; is on Main street, adjoining the business portion; is a fine, large house. McConnel's house has eight large rooms and two attics and one back room, fine portico and piazza, eight fire-places. McConnel's house would bring twice as much a complainant's; thinks complainant's house is more marketable; for his own use to live in
57 he would rather have complainant's than McConnel's, because it was smaller. Witness' house was much better than complainant's; is much nearer the court-house; don't think there was much difference; witness' lot cost $800; don't think it cost 50 per cent. more than complainant's; is a two-story house, six rooms and basement, nicely finished; has gas-fixtures.

In reply:

The house was sold by Hill to McConnel in Savannah; believed at the time that Hill made a bad trade when he sold the house; Hill is a good business man; had lived here several years.

S. D. GOODLETT.

L. B. CLINE, sworn, says:

That he has examined the house and lot sold to Mrs. Raymond; has made estimates as to what house and improvements would have cost—$2,000; would have cost that in cash before the war. Is a mechanic by profession; has worked at his trade for thirty years; has built a great many houses; is familiar with all kinds of work; the cow-house, trees, trenches, grubbing lot, is not included in his estimate. Is unable to give any opinion as to what it would have cost in 1863. There was a great demand for houses in 1863. Had gone to the place for the express purpose of making an estimate of what it was worth; made the estimate item by item.

Cross-examined:

Made estimate to-day; went through the dwelling-house; rooms small; only five; the carpenter's work was badly done; thinks improved property sells for less than its cost; the rise in property in 1864 was in confederate money; the place is one mile from town; don't think the property is affected in value by local circumstances.

In reply:

Houses sold for an advance in 1864 for confederate money; owing to the demand, thinks houses would have sold for more in 1864 than cost.

58 In reply:

Don't know of any houses sold during the war for other than confederate money.

L. B. CLINE.

WILLIAM M. THOMAS
vs.
MARY RAYMOND.

A. R. McDAVID, for defendant, sworn, says:

That in 1863 he bought a house and lot from James Goodlet, one mile from town, on the Rutherford road; bought in June or July, 1863; offered the place for $3,000 in confederate money; witness paid $2,800; sold the place for $9,000 same year, in October or November; thinks two acres in the lot; large house, 7 or 8 rooms, he supposes, 5 downstairs with shed room; in about 200 yards of Thomas' place; would rather have the place witness bought; considers it worth the most; has a good well of water and branch running through the lot; don't know anything about Thomas' place, except what he saw in passing the place.

A. R. McDAVID.

Deed of H. Lee Thurston to Wm. M. Thomas, 1856, for $750.

WILLIAM M. THOMAS
vs.
MARY RAYMOND. } In equity.

EXCEPTIONS TO REPORT OF COMMISSIONER, &C.

The complainant files the following exceptions to the commissioner's report in this suit:

59 1st. He denies that the ordinance of the convention under which the commissioner acted is of any validity or authority, as it authorizes the impairing of the obligation of contracts, contrary to the Constitution of the United States.

2d. The note and other testimony shows that it was not based on confederate money and was not to be paid in such currency, and was therefore the true value of said property, as agreed on by the parties.

3d. The sum of three thousand dollars allowed by the commissioner is not the value of the house and lot in 1863, according to the proof adduced.

4th. The commissioner has taken the first cost of the property as the basis of its value, without allowing anything for the increased value of houses and lots in 1863.

5th. Because the commissioner, in estimating the value of the house and lot, has made no allowance for the depreciation of present currency.

PERRY & PERRY.

On hearing the exceptions of the complainant, the commissioner overruled the same.

J. P. MOORE, *C. E. G. D.*

10TH JULY, 1866.

W. M. THOMAS
vs.
MARY RAYMOND AND HENRY H. RAYMOND. } Bill to foreclose mortgage.

Greenville County, common pleas.

Decree.

On hearing the pleadings in this case, the argument of counsel, and the report of the commissioner on sales—

60 It is ordered that the same be confirmed, and that the purchaser have the writ of assistance of this court to obtain possession of the premises.

It is further ordered that the injunction heretofore granted by Judge R. B. Carpenter be dissolved, and that the plaintiff have leave to enter up judgment against Henry H. Raymond, who admits that he has the whole estate of Mary Raymond in his hands, for the balance due the plaintiff, after deducting the purchase-money for the house and lot, sold by the commissioner, according to the decree of Chancellor Johnson, in this case.

It is further ordered that the defendant do pay to the purchaser at the commissioner's sale the interest on the purchase-money to date, together with the costs of this proceeding.

JAMES L. ORR.

20TH SEPTEMBER, 1872.

WILLIAM M. THOMAS, APPELLANT,
against
HENRY H. RAYMOND, APPELLEE.

Exceptions of plaintiff to decree.

In supreme court.

Hon. J. B. CAMPBELL:

DEAR SIR: Please take notice that Wm. M. Thomas, plaintiff in this case, appeals on the following grounds, to wit:

I. That the debt being based upon the following causes of action, to wit:

GREENVILLE, S. C., *25th Aug.*, 1863.

"Six months after the ratification of peace with the United
61 States, (or before, at the option of the payee,) I promise to pay Wm. M. Thomas seven thousand dollars, with interest thereon, payable annually, from the 1st September, A. D. 1863.

"Witness my hand and seal.

"MARY RAYMOND. [L. S.]"

Is not subject to reduction or abatement under the ordinance of convention nor the statutes of this State.

II. That the decree of the circuit court reducing the amount of the debt is repugnant to, and in violation of, the constitution of this State and of the United States, because it impairs the obligation of contracts.

III. That the circuit court should, as it is respectfully submitted, have decreed for the sum of seven thousand dollars, with interest thereon, computed annually, from the 1st day of September, A. D. 1863.

EARLE & BLYTHE,
Appellant's Attorneys.

CHARLESTON, S. C.

I acknowledge service of the above grounds of appeal within the time required by law.

JAS. B. CAMPBELL.

MARCH 12TH, 1873.

62 Supreme court, April term, 1873.

W. M. THOMAS
vs.
MARY RAYMOND ET AL.

Opinion.

WILLARD, A. J.:

Both parties, plaintiff and defendant, are appellants. There are many intricacies presented by the case, arising from the informality of

the proceedings of both parties in the court below. It will not be necessary to solve all the questions arising out of these informalities, as they do not affect the real question at issue between the parties; and as they sprung out of peculiar and exceptional complications between the military government of 1867, and the civil authorities, and out of the constitutional changes of the judiciary of the State made in 1868, their solution will be without general interest.

In July, 1866, Ch. Johnson made a decretal order in equity,
63 upon a bill to foreclose a mortgage, filed by W. M. Thomas as mortgagee against Mary Reymond as mortgagor, with a view to ascertaining the amount due on the sealed note, dated August 25, 1863, secured by the mortgage. The order runs as follows: "Ordered and decreed, that it be referred to the commissioner to ascertain the amount due on the sealed note, reduced to two thousand five hundred dollars, and that all payments of interest in confederate money be reduced in the same proportion, and that the parties be at liberty at the foot of this decree to take such orders as may be necessary to carry the same into execution by foreclosing the mortgage or otherwise."

The effect of this decree was to reduce the nominal amount of the sealed note to conform to some idea of the relative value of confederate currency and legal money in the mind of the chancellor but not disclosed by his decree.

From this decree the plaintiff appealed to the court of appeals. The appeal was dismissed by the court of errors, to which court it was referred, and the order appealed from affirmed. It does not appear that,
at this stage of the case, the defendant, Mary Raymond, objected
64 to the decree, but on the contrary, it may be assumed that she demanded and obtained its affirmance by the appellate court. Subsequent to the affirmance of this decretal order the amount due upon the mortgage was ascertained by a report of the commissioner confirmed by a decree of Ch. Carroll. The decree of Ch. Carroll was final and complete, as a decree of foreclosure, and bears date January 22nd, 1868. It adjudges the amount due on the note and mortgage, orders the sale of the mortgaged premises, declares that such sale shall bar the equity of redemption, directs the mode of distributing the proceeds of the sale, and awards execution for any deficiency that may exist on such sale.

It does not appear that any appeal was taken from this decree or any steps taken to vacate or modify it.

This decree is in form a final decree, and must be regarded as final as to the rights of the parties unless it is made to appear that it became nugatory under the subsequent orders of the military commandant for the time being.

This is the important question in the case, decisive of all the
65 matters presented by the present appeals.

It is alleged that the decree of Ch. Carroll became nugatory and void under the order of the military commandant dated May 23rd, 1868, which declares as follows: "It appearing to the satisfaction of the general commanding, that a decree or decretal order has been made in equity by the Hon. William D. Johnson, one of the chancellors of the State of South Carolina, in the case of William H. Thomas *vs.* Mary Raymond, whereby the sale of certain premises was ordered in violation of the provisions of paragraph 1, General Orders No. 164, (1867,) modifying General Orders No. 10, (1867,) it is hereby ordered that said decree or decretal order be set aside, vacated and annulled, and that all proceedings in said suit be staid until further orders."

Unless the decree of Ch. Carroll can be found included within the

terms of this order, it will not be necessary to consider the delicate and intricate questions growing out of the relations between the military and civil authorities of the State at that time.

66 Chancellor Carroll's decree is not to be found in the express terms of description contained in the order. Can we, then, put it there upon principles of construction?

Ch. Johnson's decree substantially answers the description of that which the order was intended to operate upon. Although that decree did not in terms order a sale of the mortgaged property, yet the concluding clause may be regarded as looking to the sale of the mortgaged premises, for that was the only mode of proceeding open under the state of the case, so that no case of misdescription is presented. In order to draw the decree of Ch. Carroll within the terms of the order, it is necessary either that this court should undertake to correct the order on the idea of a mistake, or that it be made to appear that the nullity of the decree of Ch. Johnson would of its own force render void that of Ch. Carroll.

We know of no precedent or principle of law or equity that would enable us to correct, on the principles of a mistake, the orders of a military commandant exercising supreme authority.

67 The principle on which the courts of equity correct mistakes in the contracts of parties is inapplicable, for it proceeds upon the idea that, under some circumstances, the court is the authorized exponent of the minds of the contracting parties; but such a relation the court cannot sanction to a military commandant clothed with supreme authority; he is the only exponent of his own mind. The correction of a mistake in the contracts of individuals proceeds on the general or particular equity of the transaction. The military order in question cannot be regarded as in the nature of remedial process between parties litigant, for it sets forth as the ground moving it a wrong to military authority as such, namely, disobedience of a military order, and it does not profess to operate as a means of redressing the wrongs or enforcing the rights of the parties affected by its provisions. It must be regarded as purely penal or *primitive* in its nature. Such a proceeding cannot originate an equity capable of recognition and enforcement in courts of equity as the basis of either a correction or reformation of the

68 order. Nor does it appear that the parties themselves, in their mutual dealings, have acted upon the order by way of conforming their relative rights to it, so as to make it, virtually, the law of their case by mutual contract or consent. It can have no other force before us than such as was originally imparted to it by the authority of the military commandant, and as such it cannot be regarded as acting directly on the decree of Ch. Carroll. Did it then act indirectly, reaching that decree through its direct action on that of Ch. Johnson?

At the time this military order was made the parties were already bound by Ch. Carroll's final decree, pronounced while Ch. Johnson's decretal order was in full force, standing as affirmed by the court of errors. What has occurred since to destroy this binding force? Had the final decree been made after the military order had assumed to modify the decree of Ch. Johnson, a question might have arisen on an appeal from the final decree or on other proceedings in the courts, or before the military authority looking to its vacation as a nullity, whether it

69 could be sustained independent of the validity of Ch. Johnson's decretal order. No such question is presented in the present case. It does not appear that any proceedings were taken to annul the

final decree, and therefore the parties are precluded from saying that the final decree is not conformable to, and has not adequate support from, the antecedent proceedings in the case. The validity of Ch. Johnson's order is now in no sense the test of the validity of the final decree. The parties are bound by it on the forensic principle of acquiescence.

No objection was taken to the form of the proceedings before Judge Orr. The objections urged against his order go to the merits. The first ground of appeal is not well taken, for the reasons already shown.

The second ground of appeal takes the position that the rights of the parties had, previously to the order of Judge Orr, been finally adjudicated in the proceedings before the circuit court of the first circuit.

The order of the circuit court of the first circuit cannot be re-
70 garded in any other light than as a stay of proceedings on the execution. This was the whole scope of the order of May 14th, 1869, and the memorandum on the record, of the nature of the final decision on the motion, does not indicate that its character underwent any change. It is true, the words "perpetual injunction" employed in the order made would *run* to indicate an intention beyond that of a mere stay of proceedings pendente lite, but those words must be construed by the nature of the proceeding and its relation to the general proceedings in the cause. It cannot be regarded as a new and independent suit, having for its object a perpetual injunction, for in that case it should have been commenced by bill and not by petition. It must be assumed, on the contrary, to be a collateral application or motion in the original cause. That it was intended as such is apparent from the prayer of the petition, which seeks both to set aside the original decrees and to reinstate the original suit. Such an application could be properly made only in the original cause, and is not the proper subject of a new bill.

71 The original cause was pending in the eight' circuit, where the mortgaged premises were situated, and in that circuit alone a motion to set aside the decrees could properly be made.

At most, the circuit judge of the first circuit should have confined his interference with the case to a temporary stay of proceedings, to enable the party to make his motion in the eight' circuit. The purport of the action of that court, as far as that action appears on the record before us, is in conformity with this view. It nowhere appears that the court made any order declaring the decrees or other proceedings void. The question of the validity of the decrees not having been conclusively adjudicated, the matter came properly before Judge Orr, and he was warranted in making the order appealed from.

The appeals must be dismissed, the order of Judge Orr affirmed, and the cause must be remanded to the circuit court for further proceedings.

72 THE STATE OF SOUTH CAROLINA,
In the Supreme Court:

I hereby certify that the foregoing 10 pages contain a true copy of the opinion of the supreme court in the case of W. M. Thomas vs. Mary Raymond et al., filed in my office June 19th, 1873.

Witness my hand and the seal of court this 26th day of June, 1873.

[SEAL.] ALBERT M. BOOZER,
Clerk Supreme Court.

(Indorsed:) Supreme court, April term, 1873. W. M. Thomas vs. Mary Raymond et al. Opinion, Willard, A. J. Moses, C. J., and Wright, A. J., concur. Filed June 19, '73. Certified copy.

73 *Judgment by the court.*

STATE OF SOUTH CAROLINA,
County of Greenville:

Court of common pleas.

WILLIAM M. THOMAS, PLAINTIFF,
against
HENRY RAYMOND, DEFENDANT.

This action having been brought to a trial by the court, and a decision thereon having been rendered for the plaintiff and filed, and being confirmed on appeal to the supreme court, now on motion of Earle & Blythe, counsel for the said plaintiff, it is adjudged that the plaintiff recover of said defendant the sum of three thousand four hundred and twenty-one $\frac{64}{100}$ dollars, so found, with three hundred & twenty-seven $\frac{50}{100}$ dollars costs.

EARLE & BLYTHE,
Plaintiff's Attorneys.

Judgment 17th November, 1873.
[SEAL.] W. A. McDANIEL, *C. C. C. P.*

SOUTH CAROLINA,
Greenville County:

I, W. A. McDaniel, clerk of the circuit court for the county of Greenville & State aforesaid, do hereby certify that the above is a true transcript of the original judgment in the case of W. M. Thomas against Henry Raymond, now on file in my office.

Given under my hand and seal of office, at Greenville C. H., S. C., this 19th Nov., 1873.
[SEAL.] W. A. McDANIEL, *C. C. C. P.*

74 (Indorsed:) State of South Carolina, county of Greenville. Wm. M. Thomas, plaintiff, against Henry Raymond, defendant. Judgment. Trial by court. Earle & Blythe, attorney. Amount and interest, $3,421.04; cost and disbursements, $327.50—$3,748.54. Filed , 18 , at o'clock m. Clerk's fee for transcript, $1.50.

75 WILLIAM M. THOMAS
vs.
MARY RAYMOND AND HENRY H. RAYMOND.

To the honorable Franklin J. Moses, chief-justice of the supreme court of the State of South Carolina:

I. The petition of Henry H. Raymond shews that in a cause entitled as above, in which William M. Thomas is plaintiff, and your petitioner, the survivor of his co-defendant, Mary Raymond, is defendant, such proceedings were had that a decree was rendered against the defendant, and that the authorities of the United States then exercising rule in and over the said State by virtue of a military government then established therein, through Major-General Daniel E. Sickles, then in supreme command of said State, on the eleventh day of April, 1867, issued and published a general order known as General Orders No. 10, by Paragraph II of which it is declared that "judgments or decrees for the payment of

money on causes of action arising between the 19th of December,
76 1860, and the 15th of May, 1865, shall not be enforced by execution against the property or the person of the defendant; proceedings in such causes of action now pending shall be stayed."

Paragraph III of said order declares that "sheriffs, coroners, and constables are hereby directed to suspend for twelve calendar months the sale of all property upon execution or process on liabilities contracted prior to the 19th of December, 1860, unless upon the written consent of the defendants."

That on the day of July, 1866, the honorable William D. Johnson, one of the chancellors of the said State, pronounced a judicial decree adjudicating the rights of the parties to the said cause, with liberty at the foot of this decree to take such orders as may be necessary to carry the same into execution by foreclosing the mortgage or otherwise.

That an appeal was taken from said decree of Chancellor Johnson, and on the day of December, 1867, the court of errors, being the highest court of appeal in said State, the said order No. 10 being then in force, in violation thereof, affirmed the said decree.

Your petitioner further shews that, in further violation of said General Order No. 10, the honorable James P. Carroll, one of the chan-
77 cellors of said State, on the 22nd day of January, 1868, proceeded to give effect to the said decree of Chancellor Johnson by making an order in the said cause directing a sale of your petitioner's property, and the executive officer of his court, then known as a commissioner in equity, was proceeding to carry into execution said order of Chancellor Carroll.

That on the 28th day of February, 1868, Major-General E. R. S. Canby, then exercising supreme authority in and over said State, issued and published an order known as "Special Orders No. 50," by Paragraph VIII of which he suspended from office the said commissioner for proceeding to sell your petitioner's property in violation of said General Order No. 10.

That on the 23rd day of May, 1868, Major-General E. R. S. Canby, still exercising supreme authority in and over said State, issued and published a military order known as "Special Orders No. 120," Paragraph IX of which is as follows:

"It appearing to the satisfaction of the general commanding that a decree, or decretal order, has been made in equity by the honorable William D. Johnson, one of the chancellors of the State of South Carolina, in the case of William M. Thomas vs. Mary Raymond, whereby
78 the sale of certain premises was ordered, in violation of the provision of Paragraph I, General Orders No. 164, (1867,) modifying General Orders No. 10, (1867,) it is hereby ordered that said decree or decretal order be set aside, vacated, and annulled, and that all proceedings in said suit be stayed until further orders."

That, notwithstanding said order, and in disregard thereof, and without notice to the defendant, on the fourth day of December, 1868, the said commissioner sold at Greenville the mortgaged property in satisfaction of Chancellor Johnson's decree, for the purchase-money, for the sum of $1,005, and issued execution for the balance, namely, $2,653.06, against other property of the defendant at Charleston, in said State. That thereupon she applied before the circuit judge of that circuit, stating her case, and asking that said execution be restrained, which was granted provisionally, and afterwards, upon a full hearing, the order restraining it was made perpetual.

That an appeal was taken therefrom, and the appeal afterwards dismissed for want of prosecution.

That, upon the death of your petitioner's mother, the original
79 defendant, your petitioner was made a party, and answered, setting up in defence the said military order in bar to all proceedings, resting upon the decree that had been set aside.

That certain proceedings in said cause were had before the honorable James L. Orr, one of the judges of the said State, wherein your petitioner interposed the said military orders, and claimed the protection thereof; that the validity of the said military orders was drawn in question before the said judge, and he, on the 20th day of September, 1872, decided against the validity thereof; that your petitioner appealed from the decision of Judge Orr to the supreme court of the said State on the following ground: "Because the decree or decretal order under which appellant's house in Greenville was ordered to be sold, and thereby was sold, was, long before said sale, lawfully set aside, vacated, and annulled, and all proceedings in said suit stayed; after which all proceedings, including the sale and the order confirming it, are illegal and of no lawful force or vigor."

That your petitioner, before the supreme court of the State, relied upon the said military orders, and particularly upon that of General
80 Canby, setting aside, vacating, and annulling the decree or decretal order of sale, known as "Special Orders No. 120," and that the validity of said order was drawn in question before the said supreme court, which is the highest court of law and equity in said State.

II. Your petitioner further shows that the contract in question in the said cause was made on the 25th day of August, 1863, and that the State of South Carolina, on the 27th day of September, 1865, passed an ordinance declaring a rule of construction for such contracts at variance with the rule which obtained at the time of the making of said contract, and impairing the obligation thereof.

That the said ordinance was unconstitutional, in that it was repugnant to Paragraph I, Section 10, Article I of the Constitution of the United States, which declares that no State shall "pass any law impairing the obligation of contracts."

III. Your petitioner further shews that, on the nineteenth day of June, 1873, the supreme court of the said State, being the highest court of law and equity in said State, made a final decision in the cause;
81 and your petitioner shews further that, in the decision of the supreme court aforesaid, which is now of record, it appears that a decision against the validity of the military order of General Canby of the 23rd of May, 1868, and in favor of the validity of the said ordinance of the State of 1865, was rendered against your petitioner; and your petitioner is advised and believes that he has a right to have the said decision or decree revised and examined in the Supreme Court of the United States, on a writ of error to the supreme court of said State, and your petitioner is desirous of obtaining the same.

Wherefore your petitioner prays that a writ of error be allowed him in the said cause, returnable to the next term of the Supreme Court of the United States, on his furnishing bond according to law.

(Signed) JAS. B. CAMPBELL,
Atty. for Petitioner.

Be it so.

(Signed) FRANKLIN J. MOSES,
Chief-Justice Sup. Ct. of So. Ca.

SEPT. 19TH, 1873.

(Indorsed:) Henry H. Raymond, plaintiff in error, vs. William M. Thomas, defendant in error. Petition for writ of error. J. B. Campbell, atty. for petitioner. (Copy.) Filed 19th September, 1873. Albert M. Boozer, clerk of supreme court of South Carolina.

82 IN THE MATTER OF WM. M. THOMAS
vs.
HENRY H. RAYMOND.

THE UNITED STATES OF AMERICA:

The President of the United States to the honorable F. J. Moses, chief-justice and the associate justices of the supreme court of the State of South Carolina:

Because in the records and proceedings, as also in the condition of the judgement of a plea, which is in the said supreme court of the State of South Carolina, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between William M. Thomas and Henry H. Raymond, wherein was drawn in question the validity of an authority exercised under the United States, and the validity of an ordinance of the State of South Carolina, on the ground of the said ordinance being repugnant to the Constitution of the United States, and the
83 decision was against such, the validity of the authority exercised under the United States, and in favor of such, the validity of the ordinance of the State of South Carolina, manifest errors have happened, to the *just* damage of the said Henry H. Raymond, as by his petition and complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done the party aforesaid in this behalf, do commission you, if judgement be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to law and custom of the United States should be done.

Witness the honorable Salmon P. Chase, Chief-Justice of the
84 said Supreme Court, the second day January, in the year of our Lord one thousand eight hundred and seventy-three, and clerck of the circuit court of the United States for the district of South Carolina.

I. E. Hagood.
[SEAL.]

I. E. HAGOOD,
C. C. C. U. S. for So. Ca.

Allowed by—

FRANKLIN J. MOSES,
Chief-Justice Supreme Ct. of So. Ca.

85 (Indorsed:) Henry H. Raymond, plaintiff in error, vs. William M. Thomas, defendant in error. Writ of error from the Supreme Court of the United States to the supreme court of the State of South Carolina. Filed 19 September, 1873. Albert M. Boozer, clerk of supreme court of South Carolina.

The plaintiff in error named in the within writ having given bond and security as required by law, which is approved, this writ is allowed to operate as a supersedeas to the judgement or decision therein mentioned.

Witness the honorable F. J. Moses, cheif-justice of the supreme court of the State of South Carolina, this day of , 1873.

86 United States of America to William M. Thomas, defendant in error, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden in Washington on the second Monday of October next, pursuant to a writ of error filed in the clerck's office of the supreme court of the State of South Carolina, wherein Henry H. Raymond is plaintiff in error, and you are defendant in error, to shew cause, if any you have, why the judgement or decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the party in that behalf.

Witness the honorable Franklin J. Moses, cheif-justice of the supreme court of South Carolina, this nineteenth day of September, in the year of our Lord one thousand eight hundred and seventy-three.

FRANKLIN J. MOSES,
Chf. Justice Supreme Ct. of So. Ca.

87 (Indorsed:) Henry H. Raymond, plaintiff in error, vs. William M. Thomas, defendant in error. Citation. J. B. Campbell, atty. for plaintiff in error. Filed 19 September, 1873. Albert M. Bcozer, clerk of supreme court of South Carolina.

We accept service 10th of Octr., 1873.

EARLE & BLYTHE,
Defdts. Atty.

88 Know all men by these presents that we, Henry H. Raymond and William J. Gayer, are held and firmly bound unto William M. Thomas in the full and just sum of four thousand five hundred dollars, to be paid to the said William M. Thomas, his certain attorneys, executors, administrators, or assigns; to which payment, will and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this eighteenth day of September, one thousand eight hundred and seventy-three.

Whereas lately, at a supreme court of the State of South Carolina, in a suit depending in said court between William M. Thomas, plaintiff, and Henry H. Raymond, defendant, a decision was rendered against Henry H. Raymond, and the said Henry H. Raymond having obtained a writ of error and filed a copy thereof in the clerck's office of the said court to reverse the decision in the aforesaid suit, and a citation directed to the said William M. Thomas, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden
89 *den* at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said plaintiff in error shall prosecute the said writ of error to effect and

answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

HENRY H. RAYMOND, [L. S.]
(Signed) Per B. J. WHALEY,
Attorney in fact.
(Signed) WM. J. GAYER. [L. S.]

Sealed and delivered in presence of—
J. G. HORSEY.

Approved by—
(Signed) FRANKLIN J. MOSES,
Chief-Justice Supreme Court So. Ca.

(Indorsed:) Copy. Henry H. Raymond, plaintiff in error, vs. William M. Thomas, defendant in error. Bond. Copy. "Filed 19 September, 1873. Albert M. Boozer, clerk of supreme court of South Carolina."

90 The States of South Carolina:

I, Albert M. Boozer, clerk of the supreme court of said State, do hereby certify the above and foregoing pages, from 1 to 114, inclusive, to be a true and complete transcript of the record, and of all the proceedings which have been had in said cause in said court, wherein William M. Thomas is plaintiff, and Mary Raymond and Henry Raymond defendants, as appears from the records of the said court now remaining in my custody; and the original writ of error and citation, and a copy of the petition upon which said writ was granted, and a copy of the bond, are herewith appended to said transcript.

In testimony whereof I have hereto set my hand and affixed the seal of the said court, at my office in Columbia, in said State, this twenty-fourth day of November, one thousand eight hundred and seventy-three.

[SEAL.] ALBERT M. BOOZER,
Clerk of the Supreme Court of South Carolina.

91 UNITED STATES OF AMERICA, *ss:*

[L. S.] The President of the United States, to the honorable the judges of the supreme court of the State of South Carolina, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court of the State of South Carolina before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between William M. Thomas and Henry H. Raymond, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the
92 decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Henry H. Raymond, as by his complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your

seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the twenty-sixth day of May, in the year of our Lord one thousand eight hundred and seventy-four.

Issued 26th May, 1874.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by the court.

M. R. WAITE,
Chief-Justice.

Filed 26th May, 1874. D. W. M., clerk.

93 STATE OF SOUTH CAROLINA:

Know all men by these presents that we, Henry H. Raymond, J. F. Mathews, and W. J. Gayer, of the city of Charleston, in said State, are held and firmly bound unto William M. Thomas, of said city and State, in the full and just sum of four thousand five hundred dollars, to be paid to the said William M. Thomas, his certain attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated at Charleston, in the State aforesaid, this eighteenth day of May, in the year
94 of our Lord one thousand eight hundred and seventy-four, and in the ninety-eighth year of the sovereignty and Independence of the United States of America.

Whereas on the fourth day of May, A. D. 1874, in the Supreme Court of the United States, at Washington, in a certain case entitled Henry H. Raymond, plaintiff in error, vs. William M. Thomas, defendant in error, on writ of error to the supreme court of the State of South Carolina, the following order was made: "A new writ of error may issue, to operate as a supersedeas, if the plaintiff in error, within thirty days, files with the clerk of this court a bond in the sum of four thousand five hundred dollars, with security to the satisfaction of the clerk, conditioned according to law."

95 Now, the condition of the above obligation is such, that if the said Henry H. Raymond, plaintiff in error, shall prosecute the said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

H. H. RAYMOND. [L. S.]
J. FRASER MATHEWS. [L. S.]
WM. J. GAYER. [L. S.]

In presence of—
C. D. CAMPBELL.

96 I certify that the obligors to the foregoing bond are all residents of Charleston, and each a property-holder for more than the amount of the bond, and of good credit. I believe the bond to be abundantly sufficient for the purpose.

This certificate is made by me because the clerk of the circuit court is absent from Charleston and has left no deputy.

U. S. Court, Charleston, S. Ca., 20th May, 1874.

GEO. T. BRYAN,
U. S. Judge Dist. of S. Ca.

I certify that Hon. Geo. T. Bryan, who has signed the above certificate, is dist. judge of U. S. for So. Carolina. I further certify that each of the obligors is worth the penalty of the bond.

Witness my hand and seal, at Charleston, So. Ca., the 20th May, 1874.

DANL. HORLBECK,
C. D. C. C. U. S. for S. C.

97 (Indorsed:) Approved.
(Signed) M. R. WAITE,
Chief-Justice.

Approved.
(Signed) D. W. MIDDLETON,
Clerk Sup. Ct. U. S.

Filed 26 May, 1874. D. W. M., clerk.

98 The United States of America to William M. Thomas, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of South Carolina, wherein Henry H. Raymond is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this twenty-sixth day of May, in the year of our Lord one thousand eight hundred and seventy-four.

M. R. WAITE,
Chief-Justice Sup. Ct. U. S.

99 On this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and seventy-four, personally appeared Wm. F. Dover, deputy sheff. of Charleston County, before me, the subscriber, Jno. H. Ostendorff, notary public, and makes oath that he delivered a true copy of the within citation to Wm. M. Thomas.

WM. F. DOVER,
Deputy Shff. C. C.

Sworn to and subscribed the twenty-ninth day of May, A. D. 1874.

JNO. H. OSTENDORFF,
Notary Public.

(Indorsed:) Sup. Court U. S., 1874. October term. No. 379. Henry H. Raymond, plff. in error, vs. Wm. M. Thomas. Citation & service. Filed 2d June, 1874.

(Indorsement on cover:) No. 379. Henry H. Raymond, plaintiff in error, vs. William M. Thomas. So. Carolina sup. court. Filed 10th February, 1874.

Supreme Court of the United States.

OCTOBER TERM, 1874.

HENRY H. RAYMOND
vs.
WILLIAM M. THOMAS. } No. 379.

Statement.

The plaintiff below, William M. Thomas, sold and conveyed to Mary Raymond, the testator of the plaintiff in error, Henry H. Raymond, a house and lot in the town of Greenville, South Carolina, in 1863, for the sum of $7,000, payable six months after the ratification of peace with the United States, or before, at her option, with interest on the same from September 1, 1863, payable annually.

On the 28th of May, 1866, the plaintiff below filed his bill for foreclosure. The suit was heard before Chancellor Johnson of the State court, who ordered "that it be referred to the commissioner (the master) to ascertain the amount due on the note, reduced to $2,500, and that all payments of interest in Confederate money be reduced in the same proportion, and that the parties be at liberty at the foot of this decree, to take such orders as may be necessary to carry the same into execution, by foreclosing the mortgage or otherwise." (See Transcript, p. 1.)

This decree was appealed from by Thomas, the plaintiff below, and the court of error, at December term, 1867, affirmed the decree of Chancellor Johnson.

It is proper to note here, that Thomas, the plaintiff below, took the ground on the hearing above mentioned in the court of error, that the ordinance of the State of South

Carolina of September 27, 1865, was unconstitutional. It is deemed sufficient to say of this ordinance, that it fixed the value of contracts made in Confederate money.

The report of the commissioner, made on the basis of Chancellor Johnson's order reducing the note to $2,500, showed that the principal and interest on the note amounted, January 16, 1868, to $3,265.62. (Transcript, p. 5.)

A decree of foreclusure was made January 22, 1868, by Chancellor Carroll. (Transcript, p. 5.)

Subsequently, May 23, 1868, a military order was issued by General Canby, as follows:

"It appearing to the satisfaction of the general commanding that a decree or decretal order has been made in equity by the honorable William D. Johnson, one of the chancellors of the State of South Carolina, in the case of William M. Thomas *v.* Mary Raymond, whereby the sales of certain premises were ordered, in violation of the provisions of paragraph one, General Orders No. 164, (1867,) modifying General Orders No. 10, (1867,) it is hereby ordered that said decree or decretal order be set aside, vacated, and annulled, and that all proceedings be stayed until further orders." (Transcript, pp. 6, 7.)

In the progress of the cause, the original defendant below died, and her executor, the present plaintiff in error, was made defendant. (Transcript, p. 15.)

Subsequently, on the first Monday in December, 1864, the house and lot were sold by the commissioner, in obedience to Chancellor Carroll's decree, hereinbefore mentioned. (Transcript, p. 7.) This sale was confirmed September 20, 1872. (Transcript, p. 18.)

The defendant below took an appeal from the order confirming the sale, on the 19th of November, 1872, on two grounds, the first of which is the only one bearing on the question raised here by the plaintiff in error. This being the second and final appeal in the case.

"1. Because the decree or decretal order under which appellant's house was ordered to be sold, was long before said sale lawfully set aside, vacated, and annulled, and all proceedings in said suit stayed; after which all proceed-

ings, including the sale and the order confirming it, are illegal, and of no lawful force or vigor." (Transcript, p. 19.)

The plaintiff below, Thomas, also appealed, on three grounds, only one of which it is deemed material to mention here.

"II. That the decree of the circuit court reducing the amount of the debt is repugnant to and in violation of the constitution of this State and of the United States, because it impairs the obligation of contracts." (Transcript, p. 28.)

The opinion of the supreme court is found at pages 28, 29, 30, and 31 of the Transcript.

Referring to Chancellor Johnson's decree of July, 1866, the court says:

"The effect of this decree was to reduce the nominal amount of the sealed note to conform to some idea of the relative value of Confederate currency and legal money in the mind of the chancellor, but not disclosed by his decree.

"From this decree the plaintiff (Thomas) appealed to the court of appeals. The appeal was dismissed by the court of error. * * * *It does not* appear that at this stage of the case the defendant, Mary Thomas, objected to the decree, but, on the contrary, it may be assumed that she demanded and obtained its affirmance.

"* * The decree of Chancellor Carroll was final and complete as a decree of foreclosure, and bears date January 22, 1868. * * It does not appear that any appeal was taken from this decree. * This decree is in form a final decree, and must be regarded as final as to the rights of the parties, unless it is made to appear that it became nugatory under the subsequent orders of the military commandant for the time being.

"This is the important question in the case, 'decisive of all the matters presented by the present appeals.'"

The court goes on to say that it is alleged that the decree of Chancellor Carroll became nugatory under General Canby's military order of May 23, 1864.

The court says:

"Unless the decree of Chancellor Carroll can be found included within the terms of this order, it will not be

necessary to consider the delicate and intricate questions growing out of the relations between the military and civil authorities of the State at that time."

The court concludes that Chancellor Carroll's decree is not within the express or implied meaning of the order of General Canby. (Transcript, p. 30.)

Argument.

The plaintiff in error appears to rely upon two questions as giving jurisdiction to this court. (Transcript, p. 34.)

1. That the ordinance of the State of South Carolina, of September 22, 1865, in prescribing a rule for estimating obligations solvable in Confederate currency is unconstitutional.

2. That General Canby's order was an authority under the United States, and its validity was drawn in question.

As to the first point, we submit the plaintiff in error cannot raise such question here. It was on this very point the plaintiff below (Thomas) took the case to the Supreme Court of South Carolina on the first appeal. It may be assumed that the plaintiff in error here demanded and obtained the affirmance on that appeal of the very doctrine, the constitutionality of the ordinance of September 27, 1865, which is now objected to. (Transcript, p. 29.) The plaintiff in error not having raised this point in the State court on the first appeal, when it was under consideration, cannot raise it here.

Farney *v.* Towle, 1 Black, 350.
Hoyt *v.* Sheldon, 1 Black, 518.

As to the second point.

This ground is the claim put forth under General Canby's military order.

It is clear that the decision of the Supreme Court of South Carolina did not pass upon the question of the validity of that order. The court expressly determined that that order did not apply to the case below. (Transcript, p. 29.)

Where it appears by the record that the judgment of the State court might have been based either upon a law which would raise a repugnance to the Constitution, laws, or treaty of the United States, or upon some other independent ground, and not on the law raising the federal question, this court will not take jurisdiction of the case, even though it might think the position of the court an unsound one.

Klenger *v.* Missouri, 18 Wallace, 257.
Erwin *v.* Lowry, 7 Howard, 172.

The court below has not pronounced against the validity of General Canby's order. It simply decided that the order did not apply to Chancellor Carroll's decree, but only to the order of Chancellor Johnson. Applying only to Chancellor Johnson's order, full obedience was given to it, and it did not in any degree affect the decree appealed from. The plaintiff in error cannot therefore claim the jurisdiction of this court on the ground that rights claimed under General Canby's order were overruled.

W. W. Boyce,
Counsel for Defendant in Error.

Supreme Court United States.

HENRY H. RAYMOND,
v.
WM. M. THOMAS.
No. 379.

Brief of P. PHILLIPS,

IN OPPOSITION TO MOTION TO DISMISS.

The case is a very involved one, as appears from the record, and the question of jurisdiction can be much more satisfactorily determined if postponed for consideration until the merits are presented.

The transcript gives us the history of two causes, which have been treated and adjudicated as one.

On the 26 May, 1866, William M. Thomas, the plaintiff below, filed his bill against Mary Raymond to foreclose a mortgage to secure the payment of a note for $7,000, dated 25 August, 1873, being the purchase money of a small house in Greenville, South Carolina. This was the estimated value in confederate currency.

On the 9 July, 1866, Chancellor Johnson made an order of reference to the master, who reported the value of the premises on 1 September, 1863, to be $3,000, but made no report as to the value of the "commodity" or currency in which the payment was to be made.

The chancellor was of opinion that if the evidence had been directed to the ascertainment of the value of the $7,000 in confederate currency, a more satisfactory result could be reached, he therefore referred the case back, to ascertain the amount due on the note reduced to $2,500, and decreed that—"the parties be at liberty at the foot of this decree to *take such orders* as may be necessary to *carry the same into execution* by foreclosure of the mortgage or otherwise."

This decree was affirmed by the highest court in the State in 1867.

The master reported on 16 July, 1868, the amount due, and on the 22d of same month the plaintiff obtained from Chancellor Carroll, at Chambers, an order to carry into execution the decree of Chancellor Johnson.

In the meantime the military government then supreme in the State, had, by general order, No. 164, prohibited legal proceedings on causes of action arising between December, 1860, and April, 1865.

The master acting under the order of sale above referred to, was, for his contumacy to the military authority, suspended by special order, 28 February, 1868. p. 6.

Further than this, on the 23 May, 1868, another order was issued, as follows:

"It appearing to the satisfaction of the General Commanding, that a decree, or decretal order, has been made in Equity by the Hon. Wm. D. Johnson, one of the Chancellors of the State of South Carolina, in the case of Wm. M. Thomas v. Mary Raymond, whereby the sale of certain premises was ordered in violation of the provisions of paragraph 1, General Order, No. 164, (1867,) modifying General Order, No. 10, (1867,)—it is hereby ordered, that said decree or decretal order be set aside,

vacated and annulled, and that all proceedings be stayed until further orders." p. 6.

In this connection it may be well to say, that these military orders have been ratified by a special act of the legislature of the State. See acts of 1868. p. 86.

Further proceedings were had in 1868—and on the 4 December of that year the master reported that he had sold the premises to one Gaillard for the sum of $1,005.

An execution for the remainder of the amount reported, to wit: $2,653.06 was sent to the Sheriff of Charleston District, to be there levied on other property of Mrs. Raymond.

The old widow then filed a petition to enjoin this proceeding, and, *inter alia*, she sets forth and relies on the military order which prohibited the prosecution of Causes of Action then pending, and the institution of any new suit, where the Cause of Action arose between 1860 and 1865, and also the military order of the 23 May, 1868, vacating Chancellor's decrees. p. 8.

On this petition, Judge Carpenter granted a perpetual injunction. This decree was appealed from, but for failure in its prosecution, the appeal was dismissed.

In this condition of things the old widow died intestate, and in December, 1870, the plaintiff below took an order to amend his bill by making Henry H. Raymond, as executor, a party defendant. p. 15.

To this amended bill Henry H. filed an answer denying that he was executor, and in which he sets up the violation of the military orders described in the widow's petition, and maintains that the pretended sale was a vain and idle proceeding, and cannot be confirmed, and was of no more avail than the decree which it rested on, and that the order vacating the decree had been legalized by an act of the legislature.

Judge Orr entered up a decree in this case which is entitled W. M. Thomas v. Mary Raymond and Henry H. Raymond, Bill to foreclose mortgage, on 20 September, 1872—in which he confirms the Report of the Commissioner on Sales, directs a writ of assistance to obtain possession of the premises; dissolves the injunction granted by Judge Carpenter; enters up judgment against Henry H. for the balance due plaintiff, after deducting purchase money "for the house and lot sold by the Commissioner *according to the decretal order of Chancellor Johnson in this case.*" p. 18.

From this decree both parties appealed. Raymond, because it was shown that this decree of Chancellor Johnson had been vacated by the military authority of the United States, and Thomas, because the purchase money had been reduced to the value of confederate currency, and had thus violated the obligation of his contract.

The Supreme Court of the State affirmed this judgment, and the cause is now here on writ of error to that court.

In the opinion set forth in the record which states the grounds that led to the affirmance of Judge Orr's judgment it is held, that the military order referred to, is directed only to Chancellor Johnson's decree, and does not include the order of sale made by Chancellor Carroll to carry that decree into execution.

The denial of jurisdiction here, is stated in the mover's brief thus:

"The court below has not pronounced against the validity of General Canby's order. It simply decided that the order did not apply to Chancellor Carroll's decree. The plaintiff in error cannot therefore claim

the jurisdiction of this court on the ground that rights claimed under General Canby's order were overruled." p. 5.

It is not denied that a federal question was presented for decision in the court below—but it is said that the question was not *decided*—because the court held, that the military order which raised the federal question did not have the effect which was claimed for it.

When the case is heard on the merits we apprehend no difficulty in showing that an order restraining proceedings on a decree of foreclosure is operative on all subsequent acts of administration for carrying that decree into effect.

The order was directed to prevent "the sale of the premises." If this order was legal and obligatory no subsequent action for effecting a sale could be held valid. Does it make any difference that the order of sale was made by another chancellor? If the same chancellor who was directed not to proceed had made the order in question, would not the absurdity of the argument have been patent that the order only applied to the first decree, and not to any subsequent direction for carrying that decree into effect.

But we are dealing now solely with the question of jurisdiction; and if the theory on which this motion to dismiss is correct, this court would be deprived of a very large portion of the jurisdiction intended to be conferred by the Constitution.

The party below claimed under a military order; the court decides he is not entitled, by the construction they give to it, to that protection.

Supposing this protection had been claimed under an act of Congress. A construction which excluded the

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Supposing this protection had been claimed under an act of Congress. A construction which excluded the

claimant must, in the nature of things, be subject to revision here.

We need not adduce argument when we have decision.

In the case of the Bridge Proprietors v. Hoboken, the Court say;

"It is claimed that it is not the validity of the act which is complained of, but the construction placed on that act by the State court. If this construction is one which violates the plaintiff's contract, and is the one on which the defendants are acting, it is clear that the plaintiff has no relief except in this court, and that this court will not be discharging its duty to see that no State legislature shall pass a law imparing the obligation of a contract, unless it takes jurisdiction in such cases." (1 Wall, 144.)

Take another case—the State court decides that the cause of action does not show a contract, and therefore the parties cannot invoke the federal provision which protects him from an act violating its obligation.

When the case is brought here it is said there is no jurisdiction, for the State court had decided there was no contract. But this court has met this fallacy by saying, that "it must ascertain for itself whether there was a contract to be impaired. If it were not so, the constitutional provision could always be evaded by the State courts giving such construction to the contract, or such decisions concerning its validity, as to render the power of this court of no avail in upholding it against unconstitutional legislature."

Delmas v. Ins. Co., 14 Wall, 668.

The motion to dismiss should be overruled.

P. PHILLIPS,
For Plaintiff in Error.

Supreme Court of the United States.

HENRY H. RAYMOND,
vs.
WILLIAM M. THOMAS,
No. 146.

Brief of P. PHILLIPS.

FOR PLAINTIFF IN ERROR.

Mrs. Mary Raymond, the mother of the plaintiff in error, who is described in the proceedings as an old woman over seventy years of age, in the year 1863, fled from the horrors of war at Charleston with her little grand daughter to the mountains of the State. She located at the town of Greenville and there purchased from the defendant in error a small house and lot for the sum of $7,000. For this she executed her note secured by a mortgage of the premises. The purchase money was to be paid in Confederate currency.

On the 28th of May, 1866, Thomas filed his bill of foreclosure, on which it was referred to the Commissioner to report "what was the *true value of the house and lot* on 25th August, 1863, the date of said purchase."

On the coming in of the report, there was a decree by Chancellor Johnson, in July 1866, by which it was determined that the value was $2,500, and it was then referred to the Commissioner to ascertain the amount due

on the note, reduced to $2,500, with liberty to the parties, at the foot of the decree, "to take such orders as may be necessary to carry the same into execution by foreclosing the mortgage or otherwise." p. 5.

While the cause was in this condition, General Sickles, who was in command in that Department, issued, on the 11th of April, 1867, general orders No. 10, by which he declared in paragraph 11 that "judgments or decrees for the payment of money on causes of action arising between 19th December, 1860, and 15th May, 1865, shall not be enforced by execution against the person or property of the defendant; *proceedings in such causes of action now pending shall be stayed.*"

On the 16th January, 1868, further proceedings were had in the cause by Moore, the Commissioner, making a report as to the amount due, followed by a decree of confirmation, made by Chancellor Carroll, of the 22d January, 1868, ordering a sale and awarding execution.

General Canby, who had succeeded General Sickles in the command of the Department by special orders No. 50, suspended Moore, the Commissioner, "for proceeding to sell the property of Mrs. Raymond in violation of the provisions of general orders No. 10," issued in 1867. This order is dated 28th February, 1868, and was followed by special order No. 120, which, while it permitted Moore to resume his office, commands as follows:

"It appearing to the satisfaction of the General commanding that a decree or decretal order has been made in equity by the Honorable William D. Johnson, one of the Chancellors of the State of South Carolina, in the case of Wm. M. Thomas v. Mary Raymond, whereby the sale of certain premises was ordered in violation of the provisions of paragraph 1, general order No. 164, (1867,) modifying general order No. 10, (1867,) it is

hereby ordered that the said decree or decretal order be set aside, vacated and annulled, and that all proceedings in said suit be stayed until further orders." p. 6.

Nevertheless, the Commissioner, on the 1st December, 1868, sold the said premises to one Gaillard for the sum of $1,005.

On the 2d January, 1869, Mrs. Raymond filed her petition in the Circuit Court for the first Circuit, setting forth that she had understood a sale had been made at Greenville under this invalid authority, and that the decree had been forwarded to Charleston for the purpose of being enforced against her remaining property for the remainder of the decree $2,653, and she prays that such further proceeding may be stayed, and that the original cause be restored to the condition it was in before the rendition of the decree of Chancellor Johnson, referred to in the order of General Canby. p. 9.

On this petition Judge Carpenter directed that Gaillard, the purchaser, be made a party.

Thomas and Gaillard filed their answers, and on the ——day of July, 1869, a perpetual injunction was granted.

An appeal was taken from this decree by Thomas, which was dismissed in the Supreme Court, 21 January, 1870, for want of prosecution.

With this perpetual injunction in full force, Thomas, on 9 December, 1870, presented his petition to Judge Orr, suggesting the death of Mrs. Raymond, and asking that H. H. Raymond be made a party to the suit, and that the sale might be confirmed.

Raymond answered, setting forth the invalidity of the proceedings in violation of military orders,—that by the pretended sale, after deducting $862, an execution had

been issued for $2,608, and that this had been enjoined, That the sale was a void thing and could not be confirmed; that the military orders had been ratified by act of legislature, and that the plaintiff was entitled to no relief against him. p. 17.

On this petition Judge Orr ordered that the sale be confirmed with a writ of assistance to put the purchaser into possession, and that a judgment be rendered against H. H. Raymond for the balance due of the purchase money.

Raymond appealed from this judgment on the ground that "the decretal order on which the sale was made, was long before the sale vacated and annulled, and all proceedings in said suit stayed; after which all proceedings including the sale and order confirming it are illegal and of no lawful force or vigor." p. 19.

The Supreme Court of the State, on the hearing, decided the proceedings had in the cause to be valid, dismissed the appeal and affirmed the order of Judge Orr, and remanded the cause for further proceedings. These were had, and a judgment was rendered according to the decision of the Supreme Court against defendant for $3,421 and $327 costs. p. 32.

Assignment of Error.

The plaintiff in error now assigns for error the judgment of the Supreme Court of the State, holding that the proceedings in the cause and the sale made under them to be valid, so as to entitle the defendant in error to recover the amount awarded to him on the judgment aforesaid.

The jurisdiction of this court to review the case now

submitted, is to be found in the clause of the act of 1867, providing that where any privilege or immunity is claimed under a commission held, or authority exercised under the United States, and the decision is against such privilege or immunity, then, in this jurisdiction, the judgment may be re-examined and reversed or affirmed upon a writ of error.

This provision is re-enacted in sec. 709, R. S.

The exemption claimed, was under the orders of General Sickles and General Canby, in 1867, and 1868, as heretofore set forth.

It has been, said and I presume it will be repeated, that the Supreme Court of the State did not declare these orders to be illegal, but only that they did not apply to Chancellor Carrol's proceedings, and therefore there is no jurisdiction to revise the decision.

The rights of a party to the protection provided by the act of Congress, do not rest on so uncertain a basis as is afforded by this objection.

When a party asserts a right, or exemption under the act, he is entitled to the final decision of this court.

The Court below cannot deprive him of it by a decision, that the federal authority or commission under which he claims does not apply to his case.

We need not adduce argument when we have decision.

In the case of the Bridge Proprietors v. Hoboken, the Court say:

"It is claimed that it is not the validity of the act which is complained of, but the construction placed on that act by the State court. If this construction is one which violates the plaintiff's contract, and is the one on which the defendants are acting, it is clear that the

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Delmas v. Ins. Co., 14 Wall, 668.

In still another case, immunity was claimed under a proclamation of the President suspending commercial intercourse. It was held in the court below that the proclamation did not cover the case. The motion to dismiss for want of jurisdiction was overruled.

Matthews v. Mc'C Stea, 20 Wall, 647.

The importance of holding this view is most strongly demonstrated by the facts of the case.

1. The decree of Chancellor Johnson referred the account to the master, with liberty to the parties to take such order, as may be necessary to carry the decree into execution, by foreclosing the mortgage or otherwise. (July, 1866.)

2. The decree of Chancellor Carroll confirming the report of the master, directing a sale and awarding execution. (16 January, 1868.)

3. The order of General Canby, vacating and annulling the decretal order of Chancellor Johnson—as msde in violation of general order, No. 10—and commanding "that all proceedings in said suit be stayed." (28 February, 1868.)

4. The sale made by the master, 1 December, 1868, to Gaillard.

5. The confirmation by Judge Orr of the sale made "*by the Commissioner, according to the decretal order of Chancellor Johnson in this case.*" p. 19.

With these facts before them, the Supreme Court by a labored argument, not denying the validity of the military orders, reached the extraordinary conclusion that Chancellor Carroll could proceed to carry out Chancellor Johnson's decree, because the military order had only named Chacnellor Johnson's decree.

The decretal order of Chancellor Johnson, and the order of sale of Chancellor Carroll were both before the Military Commander—when he vacated the order of the former chancellor, and directed "further proceedings to be stayed."

It was the decretal order that settled the rights in controversy; and when this was vacated and annulled, the further proceedings which were merely dependent upon it necessarily fell with it.

The order was directed to prevent "the sale of the premises." If this order was legal and obligatory, no subsequent action for effecting a sale could be held valid. Does it make any difference that the order of sale was

made by another chancellor? If the same chancellor who was directed not to proceed had made the order in question, would not the absurdity of the argument have been patent that the order only applied to the *first decree*, and *not to any subsequent direction for carrying that decree into effect.*

The rule of strict construction adopted by the court is based upon the assertion that the military order was not in the nature of a "remedial process," but is to be regarded as "purely penal or punitive in its nature."

This is an erroneous view. The circumstances which existed at the time when the general order No. 10 was issued by General Sickles, suspending proceedings on causes of action arising between 19 December, 1860 and 15 May, 1865, fully justified the order, and was in all its aspects a beneficent and remedial measure. General Canby's order was but the enforcement of this remedial measure.

The legislature of the State, taking the view of the military orders aforesaid, at the special session of 1868, and on 22 September of that year, passed an act by which it is declared, "that all rights of property, vested, accrued, or in action, by virtue of the judgments, orders, or decrees of military tribunals, or by virtue of general or special orders issued by military commanders, since the 1 March, 1865, up to the time of the expiration of the provisional government, are hereby affirmed and declared valid, and the same shall be unquestioned in the courts of the State."

And for the purposes set forth in the act it is further provided, "that the general and special orders of the military commanders aforesaid, together with the judgments, orders, and decrees of the military tribunals aforesaid, are continued in full force and virtue, unless

inconsistent with the Constitution of the State or acts passed by this special session."

Acts of 1868, p. 87.

The reconstruction acts of 2 March, 1867, (14 Stat. 428) and 19 July, 1867, (15 Stat. 14) placed the State within a military district, "subject to the military authority of the United States." This condition of things was to continue until the people adopted a constitution approved by Congress, and also adopted the 14th amendment.

The latter act declared the existing government not legal, and its existence was made "subject in all respects to the military commander of the district."

This condition of things was continued until the act of 25 June, 1868, (15 Stat., 73) which provided that the State should be admitted to representation, when it had duly ratified the 14th amendment, and the President had issued his proclamation to that effect.

This proclamation was issued 11 July, 1868. (15 Stat., 703.)

We are not called on to discuss the question as to the constitutionality of these acts, or to what extent their terms justified the commander in issuing the orders in question.

By the terms of the legislative act of 1868, they are held to be obligatory and binding on the courts of the State, and the decision now under review assumes their validity.

The sole question therefore presented is—did these orders entitle the plaintiff in error to the exemption claimed under them? It is submitted, that if the order vacating Chancellor Johnson's decree and prohibiting

further proceedings was legal, it as fully covered the action of Chancellor Carroll based upon it, as if he also had been named in the order. The argument, to the contrary, is a lame and impotent attempt to give a seeming obedience to the order, and at the same time to defeat its end and purpose.

P. PHILLIPS,
For Plaintiff in Error.

January 20, 1876.

Supreme Court of the United States.

HENRY H. RAYMOND, Plaintiff in Error,
vs.
WILLIAM M. THOMAS, Defendant in Error. } No. 146.

BRIEF FOR DEFENDANT IN ERROR.

1. We submit there was no violation of General Canby's order.

In July, 1866, (Transcript, p. 1,) Chancellor Johnson made an interlocutory decree, directing the commissioner to ascertain the amount due Thomas, with liberty to the parties to take further orders to carry the same into execution, by foreclosure or otherwise. (Transcript, p. 5.)

January 25th, 1868, on the coming in of the report of the commissioner, Chancellor Carroll made an order of foreclosure, and for sale of the property. (Transcript, pp. 5, 6.)

May 23d, 1868, the military order of General Canby was issued, commanding that "the decree or decretal order of Chancellor Johnson," above mentioned, "be set aside, vacated, and annulled, and that all proceedings in said suit be stayed *until further orders.*" (Transcript, pp. 6, 7.)

The commissioner sold the house and lot in obedience to Chancellor Carroll's decree, on the first Monday in December, 1868. (Transcript, p. 7.)

Final judgment was rendered by Judge Orr, September 20th, 1872, confirming the commissioner's sale of the prop-

erty, and ordering judgment against defendant below for the balance due. (Transcript, pp. 18, 19.)

From this judgment both parties appealed. The only point made which concerns us here, is the point made by Raymond, defendant below, that the decree under which the house had been sold had been annulled by the military order, hereinbefore referred to, of General Canby.

It is to be noted that the interlocutory decree of Chancellor Johnson, and the decree for a sale of Chancellor Carroll, were both prior to the date of General Canby's order. The interlocutory order of Chancellor Johnson had, at the date of General Canby's order, lost its active energy, having been superseded by the final decree of Chancellor Carroll. General Canby's order, then, was directed against that which no longer had active force. The sentence of nullity against that passive decree did not embrace the actual existing decree of Chancellor Carroll.

Prior to the sale by the commissioner, in December, 1868, it is clear there had been no violation of General Canby's order.

The further question is, whether General Canby's order was violated by the commissioner's sale and the subsequent decree of Judge Orr.

General Canby's order, besides annulling Chancellor Johnson's decree, directed "that all proceedings in said cause be stayed until further orders."

We submit, in relation to this part of General Canby's order, that it became null and void upon the admission to their seats in Congress of the members of Congress from South Carolina. This event took place within two months of the date of General Canby's order, to wit, July 22, 1868. By express provision in the reconstruction act of March 2, 1867, the act was to become inoperative in any State embraced in its provisions upon the admission to Congress of the members from such State. (U. S. Stats. at Large for 1866–'67, p. 429.)

On this point it is further to be noted that South Carolina was declared by Congress to have adopted a consti-

tution which is republican, and entitled to representation in Congress when she shall have ratified the 14th amendment to the Constitution of the United States, and made the duty of the President to issue proclamation of such ratification act of June 25th, 1868, (15 Stats. at Large, pp. 73, 74.)

Proclamation by President as to such ratification by South Carolina July 18, 1868. (15 Stats. at Large, p. 704.)

Ratification declared by Congress July 21, 1868. (15 Stats. at Large, p. 710.)

This part of General Canby's order was in the nature of a temporary injunction. This necessarily ceased to exist when his power upon the subject terminated; unless this be so it is difficult to see how the cause could ever have proceeded. After General Canby's power was ended, he could issue no order in the matter, not even to authorize further proceedings in the cause. And if General Canby could issue no order after his power ended, and the courts could not take jurisdiction, there was no power anywhere to authorize further proceedings.

We assume that that part of General Canby's order fell with General Canby's power.

If that be so, there was no violation of General Canby's order by the sale and subsequent proceedings.

We submit, then, that neither before the commissioner's sale nor since has there been any violation of General Canby's order.

If this be so, then the plaintiff is not entitled to claim the jurisdiction of this court.

2. In any event, we submit General Canby's order was *ultra vires*.

His authority was to protect persons and property and suppress insurrection, disorder, and violence, and to punish disturbers of the public peace and criminals, so as to permit a peaceful reconstruction of the State government, on the basis of universal suffrage for the colored and restricted suffrage for the whites.

Beyond this he had, we submit, no authority to go. He might remove a civil officer if the administration of the act for the above-mentioned purposes required, but he could not interfere as in this case with a mere ordinary litigation, which in no degree affected the administration of the reconstruction acts.

3. If it be considered that General Canby's order was authorized by the reconstruction acts, and was violated, then we submit the reconstruction acts, so far as they undertake to confer such power upon him, were unconstitutional.

That the declaration by Congress, that the State governments embraced in the reconstruction acts were illegal governments, was a political question, as announced by the court in Georgia *v.* Stanton, 6 Wall., p. 50, we do not propose to controvert.

But when those acts undertake to give to a military commander power to issue such an order as the order in this case, we submit that the question of the constitutionality of these acts in this respect is not a political question.

In Luther *v.* Borden, Judge Woodbury, admitting that the question, as to which was the legal government of the State of Rhode Island, was a political question and not within judicial cognizance, adds:

"It is clearly within judicial cognizance to decide whether the statute establishing martial law over the whole State, and under which the acts done by the defendants are sought to be justified, can be deemed constitutional." (Luther *v.* Borden, 7 How., 59.)

We submit that the question we raise in regard to the constitutionality of General Canby's order is within judicial cognizance.

It is to be observed these acts were passed in a state of peace, after rebellion suppressed.

The Legislature of South Carolina had voted previously on the XIIIth amendment to the Constitution, and its vote counted as one of the constitutional majority of three-fourths of the States.

Under this condition of things, we submit Congress could not confer upon General Canby power to issue the order in question.

The power thus sought to be conferred upon General Canby was practically the establishment of martial law over the State.

Instead of discussing this question ourselves, we beg to refer to the opinion of Judge Woodbury, in the case above cited of Luther *v.* Borden, pp. 61, 62, 65, 69, 74, 80, 86, 87. This opinion is a noble contribution to civil liberty, and will cause his name to be cherished with honor in this country as long as our free institutions are preserved in the spirit in which they were established, a leading idea of which was that the military was subordinate to the civil authority.

4. We submit whether the plaintiff in error against whom judgment was rendered by reason of his being executor *de son tort*, (Transcript, pp. 16, 28,) and being made a party February 3d, 1871, (Transcript, p. 15,) can avail himself to claim the jurisdiction of the court of any matter which occurred previous to his becoming a party.

An executor *de son tort* can maintain no action in right of the deceased. (Toller's Law of Executors, book 2, ch. 8, p. 242.)

By parity of reason it would seem he can maintain no defense in right of the deceased.

5. We submit finally whether a writ of error will lie in this case, as the judgment of the Supreme Court of South Carolina which is brought here now for review was not the final judgment in the cause—the judgment of the Supreme Court not being final, but remanding "the cause to the Circuit Court for further proceedings." (Transcript, p. 31.)

The final judgment appears to have been rendered by the Circuit Court. (Transcript, p. 32.)

Appeal does not lie from the decree of an appellate court

in favor of the complainant, but remanding the cause for further proceedings in the court below.

Pepper *v.* Dunlop, 5 How., 51.

6. If the merits could be considered, we would insist that the plaintiff in error has no just cause of complaint against the action of the courts below, but the defendant in error has, as his debt was reduced from $7,000 to $2,500.

W. W. Boyce,
Counsel for Defendant in Error.